



C.R.P.Nos.1630 of 2015 and 2892 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.Nos.1630 of 2015 and 2892 of 2016
and M.P.No.1 of 2015

1. R.Margan (died)
2. M.Sampooranam
3. M.Ambika
4. M.Haritha

(P2 to P4 brought on record
as LR's of the deceased P1, viz., R.Margan
vide order dated 21.12.2022
made in C.M.P.Nos.7647 and 7648 of 2017) .. Petitioners **in both C.R.Ps**

Vs.

1. Krishnan
2. Raman

.. Respondents **in both C.R.Ps**

Prayer in C.R.P.No.1630 of 2015:- Civil Revision Petition filed under Section 115 of CPC to allow the above C.R.P and set aside the order and decretal order dated 20.02.2015 made in I.A.No.626 of 2012 in I.A.No.256 of 2011 in O.S.No.212 of 2010 on the file of the Sub Court, Vellore, Vellore District.

Prayer in C.R.P.No.2892 of 2016:- Civil Revision Petition filed under Section 115 of CPC to allow the above C.R.P and set aside the order and decretal order dated 06.09.2013 made in I.A.No.750 of 2012 in I.A.No.256 of 2011 in O.S.No.212 of 2010 on the file of the Sub Court, Vellore, Vellore District.

In both C.R.Ps

For Petitioners : Mr.T.Dhanyakumar
For Respondents



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For R1 and R2 : No appearance
Notice served

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COMMON ORDER

These Civil Revision Petitions have been filed as against the order and decretal order dated 20.02.2015 made in I.A.No.626 of 2012 in I.A.No.256 of 2011 in O.S.No.212 of 2010 and the order dated 06.09.2013 made in I.A.No.750 of 2012 in I.A.No.256 of 2011 in O.S.No.212 of 2010, on the file of the Sub Court, Vellore, Vellore District, thereby allowing the petition to condone the delay of 60 days in filing a petition to set aside the exparte decree and also allowing the petition to set aside the exparte decree.

2. The deceased petitioner herein is the plaintiff in the suit filed by him in O.S.No.212 of 2010 for partition, in which, the respondents are defendants 1 and 2. In the said suit, all the defendants were set exparte. Thereafter, the suit was decreed by the Judgement and decree dated 29.10.2010. In pursuant to the preliminary decree passed in the partition suit, the petitioner filed a final decree application in I.A.No.256 of 2011 in O.S.No.212 of 2010. The final decree was also passed and an Advocate Commissioner was appointed to divide the property. The Advocate Commissioner visited the suit property and divided the property. Accordingly, a final decree was passed in I.A.No.256 of 2011 dated 05.07.2012. On the strength of the final decree, the deceased petitioner filed an



execution petition in E.P.No.95 of 2012 and it is pending.

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3. Pending execution petition, the respondents herein filed a petition to set aside the exparte decree dated 29.10.2010 with a delay of 60 days. Both the applications were allowed and aggrieved by the same, the present Civil Revision Petitions.

4. The learned counsel for the petitioners would submit that in the final decree application, the respondents were duly served with the notice. Even after the receipt of the same, they did not come forward to file a petition to set aside the exparte decree. Thereafter, in the final decree application, an Advocate Commissioner was appointed and at the time of inspecting the property, the respondents herein were very much present. However, they refused to sign in the report of the Advocate Commissioner. Thereafter, when the petitioner filed a petition for delivery of possession as per the final decree, the respondents filed these applications to set aside the exparte decree and to condone the delay in filing the set aside petition.

5. That apart, the respondents failed to implead other defendants as a party in the petition to set aside the exparte decree and a petition to condone the



delay in filing the set aside petition. Further, the Court below allowed these applications on the ground that the final decree was not passed in cognizance with the preliminary decree, since items viz., 12 and 13 belong to one Ramachandran. Insofar as the said property, partition cannot be done. Already, items 12 and 13, which belong to the said Ramachandran had been sold out to third parties. The said properties were not subjected to partition.

6. Heard, Mr.T.Dhanyakumar, learned counsel appearing for the petitioners. Though, notice was served on the respondents and their name has been printed, no one appeared before this Court in person or through pleader.

7. A perusal of records revealed that the petitioner herein since deceased filed a suit for partition and after receipt of notice, all the defendants were absent before the Trial Court and they were set exparte. The Trial Court passed a Judgment and Decree dated 29.10.2010. In pursuant to the preliminary decree, the deceased petitioner herein filed a petition for final decree. In the final decree also, the respondents and other defendants were duly served the notice. Even then, the respondents did not enter their appearance in the final decree application. In the final decree application, an Advocate Commissioner was appointed and he inspected the property.



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8. A perusal of report submitted by the Advocate Commissioner revealed that the respondents were served with notice and they were also present in the suit properties. However, they refused to sign in the proceedings of the Advocate Commissioner. Even then they failed to file an application to set aside the exparte decree. Whereas, on a perusal of affidavit filed in support of the condone delay petition shows that, the respondents categorically stated that only after receipt of notice in E.P.No.95 of 2012, they came to know about the final decree. That apart, the Advocate Commissioner already divided the property and final decree was also passed in accordance with the Advocate Commissioner's report. When the petitioner filed a petition for possession, the respondents herein came forward with a petition to set aside the exparte decree.

9. Therefore, the petition to set aside the exparte decree is nothing but a clear abuse of process of Court, since they had knowledge about the decree passed in the partition suit as well as the final decree. That apart, when the respondents filed a petition to set aside the exparte decree, they wantonly failed to implead other defendants in their applications. Therefore, it is also fatal to the application to set aside the exparte decree. Further, as rightly pointed by the learned counsel for the petitioners that the items 12 and 13 of the suit property



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are concerned, it belongs to the said Ramachandran, which were already sold out and the said properties are not subjected for any partition and as such those properties are nothing to do with the final decree.

10. In view of the above, the orders passed by the Court below cannot be sustained and it is liable to be set aside. Accordingly, the order and decretal order dated 20.02.2015 made in I.A.No.626 of 2012 in I.A.No.256 of 2011 in O.S.No.212 of 2010 and the order dated 06.09.2013 made in I.A.No.750 of 2012 in I.A.No.256 of 2011 in O.S.No.212 of 2010, on the file of the Sub Court, Vellore, Vellore District, are hereby set aside. The execution Court is directed to dispose of the execution petition in E.P.No.95 of 2012, within a period of eight weeks from the date of receipt of a copy of this order.

11. In the result, these Civil Revision Petitions are allowed. Consequently, connected Miscellaneous petition is closed. No costs.

21.12.2022
(3/3)

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

The Sub Court, Vellore, Vellore District.

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