



C.R.P. (NPD) No. 1312 of 2020
and C.M.P. No. 7173 of 2020

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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

C.R.P. (NPD) No. 1312 of 2020
and
C.M.P. No.7173 of 2020

1. Venkatesan
2. Minor Kousalya
3. Minor Thenmozhi
4. Minor Tamilselvan

... Petitioners

Vs.

Murugan

... Respondent

Prayer : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the orders dated 01.11.2018 passed in I.A.No.427 of 2014 in O.S.No.51 of 2011 on the file of the Principal Subordinate Judge, Tiruvannamalai.

For Petitioners : Mr. Pushparaj
For Mr. E.P.Senniyangiri

ORDER



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WEB COPY The present civil revision petition is filed against the orders dated 01.11.2018 passed in I.A. No. 427 of 2014 in O.S. No. 51 of 2011 on the file of the Principal Subordinate Judge, Tiruvannamalai.

2. The revision petitioners are the defendants 1 to 4 in O.S. No.51 of 2011 on the file of the Principal Subordinate Judge, Tiruvannamalai. The respondent/plaintiff filed the suit for partition of the suit properties into two equal shares and to allot one such share to him.

3. Though the present civil revision petitioners entered appearance through their counsel viz., Mr. G.Gandhi, they did not file any written-statement. Like wise the other defendants also did not appeal and all the defendants were set exparte and an exparte preliminary decree was passed on 02.03.2012 in O.S. No. 51 of 2011 by the learned Principal Subordinate Judge, Tiruvannamalai. Thereafter, the respondent /plaintiff (respondent herein) filed an application in I.A. No. 347 of 2012 for passing final decree. Though the revision petitioners and the fifth defendant in the suit were served with notices in the final decree



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proceedings they did not contest the said final decree proceedings and ultimately, an Advocate Commissioner was appointed in the final decree proceedings to divide the suit properties, as per the preliminary decree. Thereafter, the civil revision petitioners and the fifth defendant, viz., Elumalai filed an application in I.A. No. 706 of 2012 in I.A. No. 347 of 2012 for setting aside the exparte order passed against them in the final decree proceedings and the said petition was allowed on 15.10.2012. After giving sufficient opportunity to both the plaintiff and the defendants in the final decree proceedings, a final decree for partition was passed in I.A. No. 347 of 2012 in O.S. No. 51 of 2011 by the learned Principal Subordinate Judge, Tiruvannamalai on 19.04.2013. Thereafter, the present revision petitioners filed a petition to set aside the exparte preliminary decree passed in O.S. No. 51 of 2011 on the file of the Principal Subordinate Judge, Tiruvannamalai along with a petition under section 5 of the Limitation Act to condone the delay of 587 days in I.A. No. 427 of 2014. The respondent /plaintiff filed his counter and after full contest, learned Principal Subordinate Judge, Tiruvannamalai dismissed I.A. No. 427 of 2014 on the ground that the fifth defendant alone filed his



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objection in the final decree proceedings and that the present petitioners did not even raise any objections for passing final decree.

4. It is pertinent to note that the petition to set aside the exparte preliminary decree was filed on 27.11.2013 after passing of the final decree on 19.04.2013. The learned Trial Judge had also observed that the prayer in the petition to set aside the exparte decree is not clear as they did not mention in the petition as to whether they want to set aside the preliminary decree or the final decree. In paragraph No.6 of the orders passed in I.A. No. 427 of 2014, the learned Trial Court Judge has observed as follows:-

“6. Though this set aside petition is filed on 27.11.2013 i.e., after the passing of final decree dated 19.04.2013, the prayer in this petition is not clear whether to set aside the preliminary decree or the final decree. But, as per the date 02.03.2012 mentioned in the petition is concerned, this Court comes to a view that the prayer is to set aside the preliminary decree. If it is so, the petition is not



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At the outset it may be observed that in the instant case, the preliminary decree for partition was passed on 02.03.2012 and the petition to set aside the exparte decree was filed only in the year 2014 with a delay of 587 days. It is also clear from the records that the present revision petitioners were served with notice in the final decree proceedings. However, they did not appear before the Court and once again an exparte order was passed. Thereafter, on a petition filed by the present revision petitioners, the said order was set aside. They were also given opportunity to file their objections. However, they did not file their objections for the reasons best known to them.

5. A final decree was passed on 19.04.2013. Thereafter, the present revision petitioners filed a petition to set aside the exparte decree passed in O.S. No. 51 of 2011 along with a petition for condonation of delay of 587 days. In such circumstances, it has to be held that the petitioners



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have not shown sufficient cause to set aside the exparte preliminary decree passed in O.S. No. 51 of 2011 and all the observations made by the learned Principal Subordinate Judge, Tiruvannamalai are perfectly in order. Therefore, I do not find any reason to interfere with the same.

6. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

12.09.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

Maya



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R. HEMALATHA, J.

Maya

To

The Principal Subordinate Judge,
Tiruvannamalai.

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