



C.R.P.No.3051 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2022

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.3051 of 2014
and M.P.No.1 of 2014

P.Subramaniam

... Petitioner

Vs.

1.Kathirvel
2.Paruvatham
3.P.Chandrasekar (Died)
4.Saroja
5.Periyasamy Gounder
6.C.Sulochana
7.C.Saranya

...Respondents

** R6 and R7 implead vide order dated 11.04.2022 made in C.M.P.No.10804 of 2021*

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order of the Principal Subordinate Judge's Court at Erode, dated 22.03.2013 in I.A.No.826 of 2012 in I.A.No.189 of 2012 in O.S.No.93 of 2006.

For Petitioner : Mr.P.Valliappan

For R-1 : Mr.N.Manokaran

For RR 2,4 & 5 : No Appearance
No appearance for R2, R4 and R5



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C.R.P.No.3051 of 2014

ORDER

Aggrieved against the order dated 22.03.2013 made in I.A.No.826 of 2012 in I.A.No.189 of 2012 in O.S.No.93 of 2006 passed by the learned Principal Subordinate Judge, Erode, the petitioner has preferred the present revision.

2. The first respondent herein is the plaintiff in O.S.No.93 of 2006 . The above suit was filed for the relief of partition and separate possession. The respondents 2 to 5 herein and the petitioner herein are the defendants in the said suit. The Court below had passed *ex parte* preliminary decree for the partition of the suit properties on 31.07.2006.

3. The plaintiff, being aggrieved by the act of the defendants who did not come forward to take any steps to divide the suit properties as per the decree, had filed an application under Order XXVI Rule 13, 14 and Section 151 of the Civil Procedure Code in I.A.No.189 of 2012 for appointment of



C.R.P.No.3051 of 2014

Commissioner to divide the suit properties and for allotment of his shares as per the preliminary *ex parte* decree dated 31.07.2006.

4. Such being the position, aggrieved by the *ex parte* preliminary decree passed in I.A.No.189 of 2012, the third defendant / revision petitioner herein had filed I.A.No.826 of 2012 to set aside the same. But, the said application was dismissed by the Court below holding that the said application has been filed only to drag on the proceedings. Challenging the said order of dismissal, the petitioner herein/3rd defendant filed the present revision petition.

5. It is the contention of the learned counsel for the petitioner-3rd defendant that the respondents herein viz., plaintiff and other defendants colluded together and suppressed the fact that another family property was not shown in the schedule of property and obtained an *ex parte* decree. Therefore, the petitioner herein had filed the application to set aside the *ex parte* decree. The petitioner/3rd defendant was not able to collect all details for filing the written statement in the suit and at that point of time, the trial



C.R.P.No.3051 of 2014

Court, passed an *ex parte* order on 18.09.2012. It is submitted that no prejudice would be caused to the respondents if the exparte decree is set aside as the revision petitioner/3rd defendant is deprived of the opportunity of stating the facts before the trial court in the written statement.

6. The learned counsel appearing on behalf of the first respondent/plaintiff would submit that after enquiry, the Court below had appointed a Commissioner to divide the suit properties, as per the preliminary decree. In spite of knowing all the said facts, the petitioner herein had filed the application in I.A.No.826 of 2012 to set aside the *ex parte* order with an intention to drag on the proceedings. Therefore, he prayed to dismiss the present Civil Revision Petition.

7. Heard both sides and perused the materials available on record.

8. The Court below had passed an exparte decree in I.A.No.189 of 2012 on 16.08.2012, due to non-filing of written statement by the petitioner herein. The plain meaning of the unambiguous Sub-rule (2) of Rule 5 of the



C.R.P.No.3051 of 2014

Civil Procedure Code is that the non-filing of written statement by the defendant can be construed as an admission of the plaint by the defendant and it will be lawful for the Court to pronounce judgment in plaintiff's favour for this reason alone. In ***Dharam Pal Gupta vs. District Judge, Etah*** reported in (1982) All Rent Cases 562, the Allahabad High Court held as under :

"Therefore, reading Order VIII, R.10, C.P.C. along with O.VIII, R.5, C.P.C., it seems that even though the filing of written statement has been made obligatory and the Court has now been empowered to pass a judgment on the basis of the plaint on the ground that no written statement has been filed by the defendant still, the discretion of the Court has been preserved and despite the non-filing of the written statement, the Court may pass any other order as it may think fit (as laid down in O. VII R.10) or the Court may in its discretion require any particular fact mentioned in the plaint to be proved as laid down in Order VIII, R.5 sub-rule (2) C.P.C."

9. In the light of the above settled principles of law, this Court finds no infirmity in the order impugned in the present Civil Revision Petition.



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C.R.P.No.3051 of 2014

J.NISHA BANU, J.,

sts

Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed. Considering the fact that the suit is of the year 2006, the Court below is directed to dispose of the suit in accordance with law, within a period of three(03) months from the date of receipt of a copy of this order.

07.07.2022

msv/sts

To:

1. The Court of Principal Subordinate Judge, Erode.
2. The Section Officer, V.R. Section,
Madras High Court.

Order made in
C.R.P.No.3051 of 2014