



WEB COPY



C.R.P. (PD) No.1185 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2022

CORAM :

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

C.R.P. (PD) No. 1185 of 2017

Vadivelu

.. Petitioner

Versus

Chinnapaiyyan @ Chinnappa (died)

1.Saratha

2.Usha

3.Chandra

4.Alamelu

5.Viji

6.Kamalakannan

7.Ravi

8.Padmanabhan

9.Panneerselvam

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decretal Order dated 08.11.2016 made in I.A.No.90/2016 in O.S.No.455 of 2009 on the file of the District Munsif Court, Chengalpattu.

For Petitioner : Mr.K.Rajasekaran

For Respondents : Mr.J.Karthikeyan for RR1 to 9

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 08.11.2016 made in I.A.No.90/2016 in O.S.No.455 of



2009 on the file of the District Munsif Court, Chengalpattu.

WEB COPY

2.The petitioner is the 5th defendant and the respondents are the legal heirs of the plaintiff – Chinnapaiyan (Died) in the suit.

3.The plaintiff filed a suit for declaration and injunction in respect of the suit property. The defendants 1 and 2 and the father of the defendants 3 and 4 are sons of Late.Lakshmanan. The plaintiff is also one of the son of Late.Lakshmanan. The said Lakshmanan owned the properties and he was in peaceful possession and enjoyment of the same. After the demise of Lakshmanan, the plaintiff and the defendants 1 to 4 are entitled for equal shares in the suit schedule properties, as the legal heirs. While so, without the consent and knowledge of the plaintiff, the defendants 1 to 4 sold the suit property to the 5th defendant/petitioner. Hence, the suit in O.S.No.455 of 2009 came to be filed by the plaintiff.

4.The defendants 1 to 4 did not appear before the trial Court and as such, they were set ex-parte. Though the 5th defendant/petitioner appeared through his counsel, not filed any written statement. Hence, he was also set exparte on 29.06.2012. Immediately, on coming to know about the ex-parte decree, the 5th defendant/petitioner filed a petition to set aside the ex-parte decree with a delay of 1218 days and the same was dismissed 08.11.2016.

Aggrieved by the order of dismissal, the present Civil Revision Petition has



been filed by the 5th defendant/petitioner.

WEB COPY 5. Heard both sides and perused the materials available on record.

6. On perusal of records, it is found that the exparte decree passed as against the 5th defendant/petitioner on 29.06.2012. The plaintiffs have filed the petition on 08.10.2014, under Order 26 Rules 13 and 14 of CPC to pass a final decree in pursuance of the preliminary decree passed on 29.06.2012. In which, notice was served on the 5th defendant/petitioner and he also entered appearance through his counsel and after consuming sufficient time, he failed to file counter and hence, on 22.07.2015 the 5th defendant/petitioner was set exparte in the final decree petition also. Thereafter, Advocate Commissioner was appointed in the final decree petition and he also filed his report on 04.03.2016. Even after that, the petitioner herein entered appearance in the final decree petition and he has not chosen to file the petition to set aside the exparte decree passed against him and finally, he filed petition only on 30.11.2015 under Section 5 of the Limitation Act, to condone the delay of 1218 days in filing a petition to set aside the exparte decree passed on 29.06.2012, against him in O.S.No.455 of 2009.

7. It is the case of the petitioner, that he was suffered from Tuberculosis disease and hence, he could not file written statement and also the petitioner's counsel could not appear before this Trial Court, because of his personal



C.R.P. (PD) No.1185 of 2017

inconvenience and hence, the Trial Court set the petitioner as exparte.

Thereafter, the petitioner did not know the hearing dates of his case and he was continuously taking treatment since 25.02.2012 for Tuberculosis. Hence, the Trial Court passed an exparte decree against the petitioner on 29.06.2012.

8.It is seen from the records that though the petitioner was set exparte on 23.09.2011 itself for non filing of written statement by the trial Court and even assuming that the petitioner taking treatment for Tuberculosis since 25.02.2012, there is no reason mentioned in the petition as to why he has not filed the written statement in time. It seems that the 5th defendant/petitioner for one reason or other tried to prolong the matter before the trial Court and he has not come up with clean hands before this Court also.

9.Thus, in view of the above facts and circumstances of this case, this Court is not inclined to interfere with the order dated 08.11.2016 made in I.A.No.90 of 2016 in O.S.No.455 of 2009 on the file of the District Munsif, Chengalpattu. Accordingly, this Civil Revision Petition stands dismissed. No costs.

09.06.2022

Jer

Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

<https://www.mhc.tn.gov.in/judis>



C.R.P. (PD) No.1185 of 2017

WEB COPY

To
The District Munsif, Chengalpattu.



WEB COPY



C.R.P. (PD) No.1185 of 2017

J. NISHA BANU, J.

Jer

C.R.P (PD) No.1185 of 2017

09.06.2022