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C.R.P(NPD).No.4221 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.09.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P (NPD) No. 4221 of 2017

Chakkaraiyammal

..Petitioner

Vs.

- 1.Ramachandran
- 2.Renugadevi
- 3.Elavarasi
- 4.Minor.Rajarajachozhan
S/o.Chakkaravarthy & Elavarasi,
Rep by his mother Elavarasi as Guardian.
- 5.Venkatesan
- 6.Ramesh
- 7.Sathishkumar
- 8.Alli
- 9.Navamani
- 10.Rajasekar
- 11.Saridha
- 12.Manivannan

(Respondents 3 to 12 are ex-parte in the
Trial Court, hence notice to them may be
Dispensed with)

..Respondents

PRAYER: Civil Revision Petition filed under under Section 115 of Code of Civil procedure praying to set aside the Fair and Decretal Order dated 04.04.2017 passed in I.A.No.530 of 2016 in O.S.No.135 of 2013 on the file of Subordinate Judge, Panruti.



C.R.P(NPD).No.4221 of 2017

For Petitioner : Mr.R.Venkatajalapathy

For Respondent : Mr.R.Sunil Kumar

R1 & R2

R3 to R12 : Ex-parte

ORDER

Civil Revision Petition is filed to set aside the Fair and Decreetal Order dated 04.04.2017 passed in I.A.No.530 of 2016 in O.S.No.135 of 2013 on the file of Subordinate Judge, Panruti.

2. The petitioner herein is the first defendant in suit O.S.No.135 of 2013 filed by the first and second respondent herein/plaintiff for the relief of partition and separate possession in respect of the suit property. The first defendant being mother in law of the plaintiff, appeared through her counsel, but not filed written statement and hence the Court adjourned the matter on various dates. She remained ex-parte and the preliminary decree was passed and final decree was also filed in I.A. and a Commissioner was also appointed to divide the suit property by metes and bounds and in such circumstances, the first defendant filed an application to set aside the ex-parte decree with delay of 815 days and to condone the delay, she filed I.A.No.530 of 2016 before the Trial Court. The said application was



dismissed for the reason that her counsel has not given proper instructions and she being an illiterate lady was unaware of all the proceedings and to engage an Advocate and file Vakalat, but later she knowingly remained ex-parte, thereby during the final proceeding, she filed vexatious petition only to drag on the proceedings.

3. Considering the submissions of both sides, the learned Trial Judge in para 6 of the impugned order mentioned various dates on which adjournment was sought filing written statement, which was not filed. Furthermore, the Court was not satisfied with the plea of the first defendant and accordingly petition was dismissed. Challenging the said finding, the first defendant preferred this Revision Petition.

4. The learned counsel appearing for the revision petitioner stated that lower Court neglected to appreciate the fact that the petitioner, being an old illiterate widow, was subjected to deprivation of her properties, in an invidious manner and she is a life interest holder of the entire suit property, based upon the Will dated 29.06.1984 executed by the deceased husband, and she needs fair opportunity of hearing to justify the case based on the



finding given by the Trial Court.

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5. The learned counsel appearing for respondents 1 and 2/ plaintiffs submits that the petitioner was well aware of the proceedings and even in the earlier occasion, there was partition suit in which she herself and husband were defendants in O.S.No.78 of 1996 on the file of the Sub-Court, Panruti, wherein she has not mentioned about the alleged Will and she agreed to file compromise decree in the said partition suit, and therefore only to drag on the proceedings with an ulterior motive, she filed this petition, and besides that, preliminary decree was granted. If this petition is allowed, the plaintiffs would be put to much hardship.

6. On considering the submissions of both sides and on a perusal of the facts and records it reveals that the plaintiffs are the son-in-law and grand daughter of the second defendant/ Elavarasi and the plaintiff filed the suit for partition of the property which belonged to second plaintiff's husband. In the plaint itself, in para 7, it is mentioned that the first defendant created a document as Will executed by her husband/deceased Gopal padayachi on 29.06.1984 and the Will is not true and valid in law.



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Now the first defendant also claims the property based on the said Will executed by her husband. Will stands in the name of the first defendant wherein a life interest was given, but thereafter it goes to other defendants and the Will was denied by the plaintiffs. The first defendant still has life interest based on the Will and therefore, to render justice in this case, Will has to be proved before Trial Court. Besides, the petitioner is an illiterate lady aged about more than 75 years and so there is lot of possibility that she may not be aware of the proceedings. Hence, the reasons stated by the petitioner are sufficient to condone the delay. Accordingly, I.A.No.530/2016 has to be allowed. Accordingly, the same is allowed and she is directed to file additional written statement and liberty is given to plaintiffs to file reply. The Trial Court is directed to dispose of the suit within three months in the manner known to law.

Accordingly, C.R.P is allowed. There shall be no order as to costs.

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dsn

Index: Yes/No

Speaking order: Yes/No



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