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C.R.P. No.4280 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.4280 of 2018
and
C.M.P. No. 23442 of 2018

Rajendran,
S/o. Somasundaram Pandaram

... Petitioner

versus

Ramachandran (died)

2. Kamalavathi,
W/o.Ramachandran

3. Karthikeyan,
S/o. Ramachandran

4. Nithyasri,
D/o. Ramachandran

5. Kavin,
S/o. Ramachandran

(R3 to R5 brought on record as LR's of
deceased R-1 viz., Ramachandran vide
court order dated 12.08.2021 made in
C.M.P.No.9677 of 2021 in C.R.P. No.
4280 of 2018)

... Respondents



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PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the decree and judgment dated 26.10.2018 passed in I.A.No.25 of 2015 in O.S.No.145 of 1994 by the Hon'ble Sessions Judge, Mahila Court, Perambalur.

For Petitioner : Mr.S.S.Rajesh

For Respondent : Mr.T.Saikrishnan

ORDER

Challenging the impugned order passed in I.A.No. 25 of 2017 in O.S.No. 145 of 1994, on the file of Sessions Judge, Mahila Court at Perambalur, the plaintiff preferred this Civil Revision Petition.

2. Originally, the plaintiff filed a suit in O.S.No.145 of 1994 on the file of Sub-Judge, Ariyalur for the relief of partition against defendants 1 to 6. The plaintiff is a brother filed a suit against his brothers and sisters in respect of 25 items of suit schedule joint family property. Summons were issued and the defendants entered appearance and thereafter, they remained exparte. Hence, exparte decree was passed 31.10.1996 by passing preliminary decree in favour of plaintiff. Subsequently, to execute the said



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decree, the plaintiff filed a final decree application and on receipt of notice in the application, the defendants 1 to 6 came to know that there is an exparte decree passed against them. In fact, after filing of suit, there was a compromise entered between the parties, but behind their back, the plaintiff obtained an exparte decree. Moreover, in respect of suit properties, a power of attorney was executed in favour of one Manohar and through which, some of the properties were sold subsequent to the suit in the year of 2006. All these facts known to the plaintiff and he has not raised objections for all these transactions. When they received notice in the year of 2016 in final decree proceedings, they came to know the exparte decree and immediately, they took steps to set aside the exparte decree, but there is a delay of 7423 days. Hence, to condone the delay, the defendants 1 and 6 filed an application in I.A.No.25 of 2017 on the file of Mahila Court, Perambalur. The said application was strongly opposed by the plaintiff stating that the defendants were known about the suit proceedings and purposely they evaded to attend court. Now, to drag on the proceedings, they come forward with this application. Furthermore, the reason for delay of 7 years was not properly explained and the alleged illness claimed by the defendants has



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also not been proved with medical records. Accordingly, he prayed to dismiss the said application.

3. On hearing both sides, the trial court discussed the facts around the said application and allowed the said application holding that in the exparte decree proceedings also, the plaintiff not established how the property belong to him and not produced any document to prove his right over the property. Therefore, opportunity should be given to the contesting defendants. Accordingly, even though there is a delay of 7423 days, on considering the facts of the case, it is just and necessary, opportunity should be given to the contesting defendants and the said application was allowed with cost. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that the trial court failed to take note of the fact that the defendants, who are close relatives of plaintiff were very well aware of the suit proceedings and they purposely evaded the proceedings and the reason assigned by them also not been supported with any material evidence. In spite of that, the trial judge



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allowed the application, as such, is unfair and the same is liable to be set aside.

4. By way of reply, the learned counsel for respondents/defendants 1 and 6 would submit that after filing of the suit, the plaintiff entered into a compromise between them, but suppressing those facts, the plaintiff obtained ex parte decree in the suit, as such, is not permissible and due to the compromise, the defendants were under impression that the suit was withdrawn, but behind their back, the plaintiff initiated final decree proceedings. Hence, the necessity arose for them to approach the court for setting aside the ex parte decree.

5. Heard and considered rival submissions made by learned counsel for petitioner as well as respondents and perused the records.

6. On considering submissions of both sides and on perusal of records, it would reveals that the partition suit filed by the plaintiff was decreed as ex parte decree and on perusal of decree, the trial judge passed an one line cryptic order as if the suit is decreed as prayed for though no document was adduced on the side of the plaintiff, who claimed share in respect of 25 items of suit property, on bare perusal of plaint, the plaintiff



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has not produced any single document at the time of filing of suit itself shows that the plaintiff has not proved his claim, prima facie, by adducing documents and materials on record. However, though there is a delay on the part of defendants, but on seeing the exparte decree, it is a one line decree, which does not contain any of the issues adjudicated between the parties and the said decree is to be deemed as nullity and liable to be set aside. Accordingly, the reason assigned by the mahila judge, as such, is fair and reasonable. Therefore, this Civil Revision Petition is dismissed and the order passed by the Mahila Judge, Perambalur in I.A.No. 25 of 2017 is confirmed. However, the defendants are directed to file their written statement if any before the trial court. The trial court is directed to dispose entire proceedings within a period of six months from the date of receipt of copy of this order, since the suit is filed in the year of 1994. No costs. Consequently, the connected C.M.P. stands closed.

23.11.2022

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To
Sessions Judge,
Mahila Court, Perambalur.

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T.V.THAMILSELVI, J.

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