



CRP(MD)No.2199 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) No.2199 of 2022
and
CMP (MD) No.10237 of 2022

Kannadi : Petitioner

Vs.

Karthikeyan : Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code to call for the records relating to the fair and decreetal order dated 13.06.2022 made in I.A.No.338 of 2019 in O.S.No.605 of 2017 on the file of the Sub Court, Tirumangalam and set aside the same.

For Petitioner : Mr.J.Senthil Kumaraiah

For Respondent : Mr.S.Saravanakumar

ORDER

The respondent / plaintiff has filed a suit in O.S.No.605 of 2017 for partition, declaration and permanent injunction. The petitioner is the first



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defendant in the suit and he was set *ex-parte* on 15.04.2015. An *ex-parte* preliminary decree was also passed on 15.09.2017. As against the *ex-parte* decree, the petitioner / defendant has filed I.A.No.338 of 2019 with a delay of 652 days and the same was dismissed by the learned Subordinate Judge, Tirumangalam, vide order dated 13.06.2022, that the reasons offered are not sufficient. Aggrieved over the same, the petitioner has moved the instant revision petition.

2.Learned Counsel for the petitioner submitted that the respondent has filed the suit for partition and declaration of a sale deed dated 06.09.2001. The suit was originally filed in the year 2015 before the Sub Court, Tirumangalam Camp and later, it was transferred to Tirumangalam Regular Sub Court. In view of the said transactions, the petitioner did not receive any summons and he came to know about the proceedings only in the year 2019 on receipt of notice in the final decree proceedings.



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3.He further submitted that the second defendant, the mother of the plaintiff, has executed a sale deed in his favour, on behalf of the plaintiff on 06.09.2001. He is having a valid title and now, this suit has been filed as a collusive suit to defeat the rights of the petitioner. The delay in filing the petition to set aside the *ex-parte* decree is neither wilful nor wanton. He is having a very good case and prayed for an opportunity.

4.Learned Counsel for the respondent submitted that the respondent / plaintiff was a minor during the year 2001 and this deed dated 06.09.2001 was created for the property of the minor, by his mother / second defendant, who is not having any right to create such document. He further submitted that the delay has not been properly explained and the Court has considered the grounds raised by the petitioner and has rightly rejected the petition.



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5.This Court considered the rival submissions made on either side and perused the available records.

6.The petitioner / defendant claims that he has not received any summons in O.S.No.605 of 2017. The fact remains that the case, which was originally filed before the Camp Court, has been subsequently transferred to the Regular Court. The petitioner is also claiming that he is having title over the property, through a registered sale deed executed in the year 2001, by the mother of the plaintiff / the second defendant, on behalf of the minor son and he is having a good case in the suit.

7.Considering the facts and circumstances of the case, the nature of relief sought for, this Court is inclined to provide one opportunity to the petitioner, however, with costs. Accordingly, this revision petition stands allowed and the order impugned dated



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13.06.2022 stands quashed, on condition that the petitioner shall pay a sum of Rs.5,000/- [Rupees Five Thousand only] directly to the respondent, within a period of three weeks from the date of receipt of a copy of this order. On production of the proof of payment, the trial Court shall set aside the *ex-parte* decree and proceed with the case and shall endeavour to conclude the trial as expeditiously as possible, preferably within a period of eight months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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10.11.2022

To

The Subordinate Judge,
Tirumangalam.



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B . PUGALENDHI , J .

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