



C.R.P PD(MD) No.2055 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 03.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

C.R.P(MD)No.2055 of 2022 and
CMP(MD) No.9394 of 2022

Thangamani

... Petitioner

Vs

1.Pitchaiammal

2.Thangadurai @ Manikandan

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 12.07.2022 made in I.A.No.2 of 2021 in O.S.No.40 of 2016 on the file of the Additional District Court, Dindigul by allowing this Civil Revision Petition.

For Petitioner : Mr.D.Balamurugapandi

ORDER

This Civil Revision Petition is filed as against the order passed by the learned Additional District Court, Dindigul in I.A.No.2 of 2021 in O.S.No.40 of 2016, dated 12.07.2022.



C.R.P PD(MD) No.2055 of 2022

WEB COPY

2.The respondents/plaintiffs filed the above suit in O.S.No.40 of 2016 for partition. When the suit was posted for written statement on 17.10.2016, the defendant did not appear and failed to file the written statement and therefore he was set exparte and preliminary exparte decree was also passed on 02.09.2017. The plaintiffs also filed an application for final decree proceedings in I.A.No.49 of 2019, wherein, the petitioner has entered appearance on 14.06.2019 and also contested the application through a counsel. His objection was also filed on 08.12.2020. Thereafter, the trial Court has passed an order appointing an Advocate Commissioner on 25.03.2021 to identify the properties and to file a report. The Advocate Commissioner has also filed his report on 23.12.2021. Thereafter, the petitioner has filed an application in I.A.No.2 of 2021, to set aside the exparte decree dated 02.09.2017 with a delay of 1162 days on 07.12.2020 and the same was dismissed by the trial Court that the delay has not been explained. Aggrieved over the same, the present Civil Revision Petition is filed.



C.R.P PD(MD) No.2055 of 2022

WEB COPY

3.The learned counsel appearing for the petitioner submits that the petitioner has filed the above application in I.A.No.2 of 2021 on 08.12.2020 within three months from the date of the exparte decree. However, the same was returned by the trial court for compliance of certain defects on 09.12.2020, which was represented only on 20.12.2021 after compliance. The reason for the delay is that he suffered with jaundice and was taking treatment at Kerala. However, the trial Court without appreciating this reason, erroneously dismissed the application filed by the petitioner.

4.Heard the learned counsel appearing for the petitioner and perused the materials placed on record.

5.The respondents/plaintiffs filed the above suit in O.S.No.40 of 2016 for partition. Due to non-filing of the written statement by the petitioner/defendant on 17.10.2016, he was set exparte and preliminary exparte decree was passed on 02.09.2017. Thereafter, the plaintiffs filed



C.R.P PD(MD) No.2055 of 2022

WEB COPY

an application for final decree proceedings in I.A.No.49 of 2019. The petitioner has also entered appearance in the final decree proceedings and thereafter filed this application in I.A.No.2 of 2021 to set aside the exparte decree with a huge delay of 1162 days and the reasons assigned is not acceptable and considering the manner in which the petitioner is protracting the proceedings, the trial Court has rightly dismissed the application. The petitioner has not made out any ground. There is no reason to interfere with the orders of the trial Court.

6.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.11.2022

Index : Yes / No.

Internet : Yes / No.

vrn

To

The Additional District Court, Dindigul



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C.R.P PD(MD) No.2055 of 2022

B.PUGALENDHI, J.

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C.R.P(MD)No.2055 of 2022 and
CMP(MD) No.9394 of 2022

03.11.2022