



C.R.P(NPD).No.637 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(NPD).No.637 of 2020 &
C.M.P.No.5532 of 2020

I.S.Kumar (Deceased)

1.S.Bhavani Selva Durai

2.K.Manimaran

3.K.Mahendran

.. Petitioners/defendants 2 to 4

VS

1.K.Panner

.. 1st respondent/plaintiff

2.S.Premavathy

3.S.Niroshini

4.S.Harshini (Minor)

5.S.Hariharan (Minor)

.. Respondents 2 to 5 /

Defendants 5 to 8

Petition filed under Article 227 of the Constitution of India against the Fair and Decretal order dated 13.12.2019 in I.A.No.8246 of 2018 in O.S.No.147 of 2013 on the file of the learned XIII Assistant City Civil Court, Chennai.

For Petitioners : Mr.Arvind Srevatsa
for Mr.R.Arun Kumar

For Respondents : Mr.D.T.Janardhanan



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ORDER

This petition has been filed to set aside the order dated 13.12.2019 in I.A.No.8246 of 2018 in O.S.No.147 of 2013 on the file of the learned XIII Assistant City Civil Court, Chennai.

2. O.S.No.147 of 2013 is a suit for declaration and partition. It is inter se the family members. i.e., to say, they are not strangers to the suit. The plaintiff and the defendants 2, 3 & 4 are the children of the first defendant. The defendants 5 to 8 are the legal heirs of the predeceased brother K.Sampath. The cause of action for the suit is that the first defendant executed a settlement deed for the property in favour of the defendants 2 to 4. Therefore, the plaintiff sought for declaration that the settlement deed is null and void and for consequential relief of partition. In the said suit, an ex-parte judgment was rendered on 20.06.2014. To set aside the same, an application was filed in I.A.No.8246 of 2018 under Section 5 of the Limitation Act for condonation of delay of 1367 days in filing an application to set aside the exparte decree. This was strongly opposed by the respondents and consequently, by an order dated



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13.12.2019, the said application came to be dismissed. Against which the present revision.

3. Heard Mr.Arvind Srevatsa, learned counsel representing Mr.R.Arunkumar, learned counsel for the petitioners and Mr.D.T.Janardhanan, learned counsel for the respondents.

4. At the outset, I have to take notice of the manner of disposal of the suit in O.S.No.147 of 2013. The relevant portion of the said judgment reads as follows:

“10. The plaintiff was examined as PW1 and contested that the property was allotted by the Government on behalf of the family members of the plaintiff and the defendant. He further deposed that the suit property was joint family property and the plaintiff is entitled for a share in the property and the first defendant has wrongfully executed the settlement deed in favour of the 3rd defendant. Hence, the plaintiff is entitled for 1/6th share in the suit property, and the settlement deed should be declared as null and void. In the consequence, the plaintiff is entitled for the permanent injunction as prayed for them also.

11. In the result, suit is decreed by declaring that



the settlement deed dated 16.08.2007 as Null and Void and for granting permanent injunctions. Further the plaintiff is entitled for a preliminary decree for 1/6th share in the suit property. No costs.”

5. This court has consistently held that it is the duty of the court, even if the defendant remains exparte, to give reasons for the judgment. In ***R.Stella vs. V.Antony Francis, (2019) 5 L.W. 161*** by my brother Justice Anand Venkatesh, following the Division Bench of Madurai bench of Madras High Court in ***Meenakshisundaram Textiles vs. Valliammal Textiles Ltd., Tiruppur, (2011) 3 CTC 168*** has held that such a decree is ex-facie illegal. He has also held that it is the duty of the court dealing with the condonation of delay to take a note of the fact that such a judgment has been rendered in favour of the plaintiff. Applying the principles in the aforesaid judgment to the facts of the present case, I have to come to the conclusion that the judgment is illegal and cannot be sustained even for a moment. The defendant has stated that the person who was taking care of the case namely the first defendant has passed away and therefore, they were not aware of the stage of the suit.



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6. This seems to be a possible explanation, because the person through whom they claim property is the first defendant and it would have been the first defendant who had taken active steps to defend the document executed by him. Therefore, on his death, the failure of the parties to appear before the court seems to be condonable.

7. However, I have to take into consideration the fact that the plaintiff has taken further steps and has initiated final decree proceedings. I feel that if cost is imposed, it will set right the prejudice caused to him. I have quantified the cost to Rs.50,000/- which shall be paid on or before 30.11.2023. On payment of cost, the **Civil Revision Petition will stand allowed.**

8. On the proof of payment of cost, the learned XIIIth Assistant City Civil Judge is requested to take the application under Order 9 Rule 13 and allow the same. The written statement of the parties shall be filed on or before 31.12.2023. In case, either of the conditions are not complied with, i.e., if the cost is not paid or the written statements are not filed, the civil revision petition will stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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Index: Yes/No

Speaking order/Non speaking order

Neutral Citation: Yes/No

To

1. The XIII Assistant City Civil Court, Chennai.



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V. LAKSHMINARAYANAN,J.
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