



C.R.P.No.1596 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on 19.06.2023	Pronounced on 22.12.2023
-------------------------------	---------------------------------

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA

KURUP

C.R.P.No.1596 of 2021
and C.M.P.No.12434 of 2021

1.A.Koutilyan
2.Therasammal

...Petitioners/Petitioners/Defendants

-Vs-

A.Bharathi

...Respondent/Respondent/Plaintiff

Prayer:- Petition filed under Article 227 of the Constitution of India, against the order dated 04.01.2020 made by the learned Sub-Judge, Tiruppattur in I.A.No.522 of 2017 in I.A.No.193 of 2016 in O.S.No.128 of 2014.

For P1 : Mr.S.Kothandaraman
For P2 : Mr.V.Jeevagiridharan
For Respondent : Mr.P.A.Sudesh Kumar

ORDER

This Civil Revision Petition is filed by the Defendants in O.S.No.128 of 2014 before the learned Sub-Judge, Tiruppattur, who are the Revision Petitioners herein.



C.R.P.No.1596 of 2021

WEB COPY

2. Brief facts which are relevant to decide this Civil Revision Petition are as follows :-

- a) The suit was filed for partition by the Respondent/Plaintiff.
- b) It is the case of the Petitioners that the suit property was already bequeathed to the 1st Petitioner by his father during his life time and the 1st Petitioner's enjoying the same as a rightful owner.
- c) The 2nd Petitioner is the mother of the 1st Petitioner.
- d) The Plaintiff in O.S.No.128 of 2014 is the daughter of the 2nd Petitioner and sister of the 1st Petitioner. She has no right to claim partition.

3. Learned Counsel for the Revision Petitioners submitted that Defendants 1 and 2 were set *ex parte*. Therefore, to set aside *ex parte*, I.A.No.193 of 2016 in O.S.No.128 of 2014 was filed by the Petitioners as Defendants 1 and 2. When I.A.No.193 of 2016 in O.S.No.128 of 2014 was posted for enquiry on 13.06.2016, there was no representation for the Petitioners as the Advocates were on boycott. The 1st Petitioner is employed and resides in Chennai and the 2nd Petitioner is aged 80 years and due to her advanced age and health issues, she was unable to travel up to



C.R.P.No.1596 of 2021

Tiruppattur from Chennai. Therefore, on 13.06.2016, the Petition in I.A.No.193 of 2016 in O.S.No.128 of 2014 was dismissed.

4.I.A.No.193 of 2016 in O.S.No.128 of 2014 was filed by the Defendants in O.S.No.128 of 2014 to set aside the *ex parte* decree passed against Defendants 1 and 2 in O.S.No.128 of 2014 dated 15.09.2015. Since I.A.No.193 of 2016 in O.S.No.128 of 2014 was dismissed on 13.06.2016, to restore the Petition in I.A.No.193 of 2016 in O.S.No.128 of 2014, the Petition to be filed under Order IX, Rule 9 of CPC, to restore the I.A.No.193 of 2016 in O.S.No.128 of 2014, there was a delay of 349 days. Therefore, the Petition under I.A.No.522 of 2017 in I.A.No.193 of 2016 in O.S.No.128 of 2014 was filed to condone the delay in filing the Petition under Order IX, Rule 9 of CPC. The Petition under I.A.No.193 of 2016 in O.S.No.128 of 2014 was filed to restore the Petition under Order IX, Rule 13 of CPC, to set aside the *ex parte* decree dated 15.09.2015 in O.S.No.128 of 2014. The Petition under I.A.No.522 of 2017 in I.A.No.193 of 2016 in O.S.No.128 of 2014 was resisted by the Plaintiff in O.S.No.128 of 2014 and the Decree Holder in O.S.No.128 of 2014, stating that the Petition had been filed wantonly to cause harassment to the



WEB COPY

Plaintiff/Decree Holder, thereby preventing the Decree Holder from enjoying the fruits of the decree. It is the further contention of the learned Counsel for the Respondent that in continuation of the preliminary decree passed in favour of the Plaintiff in O.S.No.128 of 2014, the Plaintiff as Decree Holder had filed Petition for a final decree, in which notice was also served on the Respondents/Defendants in O.S.No.128 of 2014 and they are aware of the final decree proceedings. An Advocate Commissioner was appointed, he had visited the suit property and filed report. Based on the report, final decree is to be passed. The Petitioners herein as Respondents in the final decree application had wantonly filed this Petition only to cause harassment to the Plaintiff/Decree Holder. The reason stated in the Petition is not at all acceptable.

5.It is the contention of the Plaintiff in the suit that the suit property is to be divided into 1/3rd share and a preliminary decree has already been passed granting 1/3rd share to the Plaintiff. In continuation of the same, final decree application is pending before the learned Sub-Judge, Tiruppattur. On perusal of the records maintained in the Trial Court, the learned Judge had dismissed the Petition stating that if the Defendants had



C.R.P.No.1596 of 2021

good case to succeed they would have participated in the suit proceeding in O.S.No.128 of 2014, they had not done so, they had filed a Petition to set aside the *ex parte* decree by filing the Petition under Order IX, Rule 13 of CPC in I.A.No.193 of 2016 in O.S.No.128 of 2014 and that Petition was allowed to be dismissed for non-prosecution and subsequently, Petition filed under Section 5 of Limitation Act, to condone the delay of 349 days in filing the Petition under Order IX, Rule 9 of CPC, to restore the Petition in I.A.No.193 of 2016 in O.S.No.128 of 2014 also dismissed. The learned Sub-Judge, Tiruppattur, had stated that the final decree application and the Petitioners herein as Respondents remained *ex parte*. Based on the Court records, the learned Judge had found out that the Petitioners have no case at all and have been delaying the proceedings only with the ulterior motive to cause harassment to the Plaintiff in O.S.No.128 of 2014 and the Petitioners in the final decree application.

6.The finding of the learned Sub-Judge, Tiruppattur, is based on the rulings cited by the learned Counsel for the Respondent, which are as follows:

a) In the case of ***Sivakumar and Another Vs. R.Sengodan*** reported in



C.R.P.No.1596 of 2021

2007 (4) CTC 50.

WEB COPY

- b) In the case of ***N.Kathirvel Vs. N.Kalimuthui Gounder Maruthachan*** reported in **2009 (4) TLNJ 397 (Civil)**.
- c) In the case of ***Shanmugam Vs. Chokkalingam*** reported in **2009 (5) CTC 48**.

Also the learned Trial Judge has discretion to draw an adverse inference from the facts and circumstances of this case as gathered from the records available before him. Therefore, the finding of the learned Trial Judge has more weightage in the eyes of law. The learned Trial Judge had arrived at the conclusion that the Defendants in the suit had remained *ex parte*, thereby allowing the Court to pass a preliminary *ex parte* preliminary decree and filed a Petition to set aside the preliminary decree. Petition to set aside the preliminary decree was allowed to be dismissed when it was posted for enquiry. After dismissal of the Petition to set aside the *ex parte*, the Petition had been filed to condone the delay in filing under Order IX, Rule 9 of CPC, to restore the Petition I.A.No.193 of 2016 in O.S.No.128 of 2014 which is Petition under Order IX, Rule 13 of CPC. Therefore, the learned Judge had arrived at the conclusion that the



WEB COPY

Defendants as Petitioners in I.A.No.522 of 2017 in I.A.No.193 of 2016 in O.S.No.128 of 2014 do not have the case to succeed in a suit for partition preferred by the daughter of the deceased Arunachalam against the mother of the Plaintiff and brother of the Plaintiff, wife and son of the deceased Arunachalam. The Court has powers to draw adverse inference under Section 114 of the Indian Evidence Act, 1872, based on materials available before the Trial Court. Therefore, the finding of the learned Judge in dismissing I.A.No.522 of 2017 in I.A.No.193 of 2016 in O.S.No.128 of 2014 does not warrant any interference. The Civil Revision Petition has no merits and is to be dismissed as devoid of merits.

7. Point for consideration:

Whether the order passed by the learned Sub-Judge, Tiruppattur, dismissing I.A.No.522 of 2017 in I.A.No.193 of 2016 in O.S.No.128 of 2014 a Petition under Section 5 of the Limitation Act, to condone the delay of 349 days in filing the Petition under Order IX, Rule 9 of CPC, to restore I.A.No.193 of 2016 in O.S.No.128 of 2014 dated 04.01.2020 is to be set aside?

8. On perusal of the affidavit of the Petitioner before the learned Sub-Judge, Tiruppattur, in I.A.No.522 of 2017 in I.A.No.193 of 2016 in O.S.No.128 of 2014, the counter filed by the Plaintiff as Respondent in I.A.No.522 of 2017 in I.A.No.193 of 2016 in O.S.No.128 of 2014 and the



C.R.P.No.1596 of 2021

WEB COPY

order passed by the learned Sub-Judge, Tiruppattur, dismissing I.A.No.522 of 2017 in O.S.No.128 of 2014 as per order dated 04.01.2020.

9.The order passed by the learned Sub-Judge, Tiruppattur, is found to be a well-reasoned order. It is a case of the learned Counsel for the Petitioners when the case came up for hearing that there was an Advocate Boycott. Therefore, the *ex parte* decree was passed. Subsequently, the Petition filed under I.A.No.193 of 2016 in O.S.No.128 of 2014 to set aside the *ex parte* decree was also dismissed due to the absence of the Counsel.

10.As per the circular of this Court issued in December 1995, based on the reported ruling of this Court in **1995-2-L.W. 932 [Madras Sugars Limited, S.Alamelu Achi -vs- The State of Tamil Nadu, Rep. by its Chief Secretary, Fort St. George, Madras – 9, 2. Madurai Sarkarai Alai Karumbu Urpathiyalar Sangam, Pandiyapuram, rep. by its Secretary S.Ramasamy]** a Division Bench consisting of Their Lordships the Hon'ble Mr.Justice M.Srinivasan, as he then was, and the Hon'ble Mr.Justice S.S.Subramani, boycott cannot be considered by the Court in disposing off the cases. The relevant portion of the reported ruling is extracted as under:



“Advocates/Strike/Boycott/Practice — Decision of a few advocates to boycott courts should not necessarily be followed suit by others — Duty of advocates is to attend Court— Action should be taken by Court against those who prevent advocates from carrying out their duties.

Call on Members of the Profession to realise their responsibility — Bocotting as a regular feature in the State throughout the year, noticed with anguish.

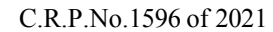
No advocate has a right to abstain without first returning the briefs to the clients and refunding the fees received — Breach of contract and breach of trust on the part of the lawyers, and also professional misconduct.

Abstaining from Court by the lawyer to avoid unruly scenes in court is an unfortunate matter for the entire administration of justice.

8. In our opinion no advocate has a right to abstain from Court without first returning the briefs to his clients and refunding the fees received from them. It is well known that several clients are paying through their nose by borrowing heavily to their advocates and it is a matter of life and death for them. Failure of a lawyer to attend to his cases in Court would not only be breach of contract and breach of trust but also professional misconduct. If Courts choose to remain silent witnesses and help such lawyers to stay away from Courts by adjourning the cases, it will not only be a case of failure to exercise jurisdiction and dereliction of duty but also abatement of the unlawful and unethical activities of the advocates”

11. Also as per the reported ruling of the Hon'ble Supreme Court of India in **2002 SCC OnLine SC 1218 [Ex.Capt. Harish Uppal -vs- Union of India]**, the Hon'ble Supreme Court had observed as follows:

“41. It is no doubt true that the Bar should be strong, fearless and independent and should be in a position to lead the society. These qualities could be and should be utilized in assisting the



42. At present it is admitted that the judiciary is overburdened with pending litigation. If strikes are resorted to on one or the other ground, litigants would suffer as cases would not be decided for years to come. Therefore, some concrete joint action is required to be taken by the Bench and the Bar to see that there are no strikes any more.

43. For this purpose, in our view, the suggestion made by the Bar Council of India in its resolution dated 29-9-2002, requires to be seriously considered and implemented by each Bar Association. Grievances Redressal Committees at taluk level, district level, High Court level and Supreme Court level should be established so that grievances of the advocates at all levels could be resolved. If action is required to be taken on the grievances made by the advocates it should be immediately taken. If grievances are found not to be genuine then it should be made clear so that there may not be any further misunderstanding.

44. *It is true that advocates are part and parcel of the judicial system as such they are the foundation of the justice-delivery system. It is their responsibility of seeing that justice-delivery system works smoothly. Therefore, it is for each and every Bar Association to be vigilant in implementing the resolution passed by the Bar Council of India of seeing that there are no further strikes any more. The Bar Council of India in its resolution has also stated that the resolution passed by it would be implemented strictly and hence, the Bar Associations and the individual members of the Bar Associations would take all steps to comply with the same and avoid cessation of the work except in the manner and to the extent indicated in the resolution.”*



C.R.P.No.1596 of 2021

WEB COPY

In the reported case, the Hon'ble Supreme Court had deprecated the practice of Bar Boycott which affects the disposal of the cases in the Courts throughout the country resulting in backlogs increasing over the years. Even after issuance of circular and even after the reported decision of the Hon'ble Supreme Court the members of the Bar are observing Court boycott. This cannot be treated lightly or condoned. As observed in the reported decision of this Court in **1995-2-L.W. 932**, **“no advocate has a right to abstain without first returning the briefs to the clients and refunding the fees received”**. When the litigant engage a Counsel the litigant pays the fees. The advocate files vakalat which is a power of attorney deed governed under the Indian Contract Act. A contract by an Advocate that he will lend his professional service for the fees paid. The Advocate by observing boycott failed in his/her duty to act as per the Contract to protect his/her principal, the litigant. Even after the reported decision in 1995-2-L.W. 932, the Advocates are violating the guidelines issued through the reported rulings.

12. Here in this case, the excuse of the Petitioners is that the Petitioners Counsel did not appear on the date of the enquiry. If the 1st



C.R.P.No.1596 of 2021

WEB COPY

Petitioner is employed in Chennai and the 2nd Petitioner is aged, the mother of the 1st Petitioner due to her health and advanced age, she is unable to travel alone from Tirupattur to Chennai. Still, what prevented the 1st Petitioner to come and appearing before the Court on the date when the case was posted for enquiry, which shows the ulterior motive of the Petitioners is only to protract the proceedings. They were aware of the fact that the Respondent as Plaintiff as Decree Holder had filed Petition for final decree. Only after notice in the final decree was served on the Petitioners, the Court would have appointed an Advocate Commissioner. As per the order passed by the learned Sub-Judge, Tirupattur, the Advocate Commissioner also visited the property and filed his report. Now the stage had reached based on the Advocate Commissioner's Report, the learned Sub-Judge, Tirupattur, has to exercise his discretion and pass final decree in favour of the Decree Holder. A final decree is passed based on the preliminary decree. Already, there is a preliminary decree in favour of the Respondent that the Respondent is entitled to 1/3rd share. Therefore, in continuation of the same, now the property is to be measured and 1/3rd share of the property is to be identified with metes and bounds favouring the Petitioners in final decree application (Decree Holder). At that stage,



C.R.P.No.1596 of 2021

WEB COPY

the Petition had been filed. As per the records of the Court, relying on the records of the Court, the learned Sub-Judge, Tiruppattur, had arrived at the conclusion on the basis of the materials available before him from the records of the Court. Therefore, he arrived at the conclusion that the Petitioners herein as Respondents in I.A.No.193 of 2016 in O.S.No.128 of 2014 for final decree application had wantonly delayed the proceedings, thereby with an ulterior motive to cause harassment to the Plaintiff to prevent her from enjoying the fruits of the decree. Therefore, he had rightly dismissed the Petition. The finding of the learned Sub-Judge, Tiruppattur, gains weight before either the Appellate Court or the Revision Court as the finding is based on the material available before the learned Judge. Therefore, it is not a fit case to exercise the extraordinary powers of the High Court under Article 227 of the Constitution of India, to set aside the order of the learned Sub-Judge, Tirupattur.

13.If this Petition is allowed, it will give rise to many such partition suits pending before Trial Courts for the delaying tactics employed by the Defendants in the suit, thereby preventing the Plaintiff from enjoying the fruits of the decree.



C.R.P.No.1596 of 2021

WEB COPY

14. In the light of the above discussion, the point for consideration is answered in favour of the Respondent against the Revision Petitioners. The order passed by the learned Sub-Judge, Tiruppattur, dismissing I.A.No.522 of 2017 in I.A.No.193 of 2016 in O.S.No.128 of 2014 does not warrant any interference and hence Revision Petition fails.

15. In the result, this **Civil Revision Petition stands dismissed as having no merits. The learned Sub Judge, is directed to pass final decree within the period of one month from the date of receipt of a copy of this order.** The order passed by the learned Sub-Judge, Tiruppattur, dismissing I.A.No.522 of 2017 in I.A.No.193 of 2016 in O.S.No.128 of 2014 is confirmed. No costs. Consequently connected Miscellaneous Petition is closed.

.12.2023

cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



WEB COPY



C.R.P.No.1596 of 2021

To

1. The Sub-Judge,
Tiruppattur.
2. The Section Officer, VR Records,
High Court, Chennai.

SATHI KUMAR SUKUMARA KURUP, J.,



WEB COPY



C.R.P.No.1596 of 2021

cda/srm

**Pre-delivery Order in
C.R.P.No.1596 of 2021**

.12.2023