



CRP. No. 523 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 523 of 2023
& CMP No. 4243 of 2023

Arivazhagan

...Petitioner

Vs.

2.Kolanjiammal

2.Kamathi

....Respondent

PRAYER : This petition filed under Section 115 of CPC, to set aside the fair and decreetal order dated 19.12.2022 made in I.A No. 560 of 2021 in O.S No. 28 of 2014 on the file of the Principal District Munsif Court, Ulundurpet.

For Petitioner : Mr.C.Munusamy

For Respondents : Mr.S.Sasikala

ORDER

This petition has been filed to set aside the fair and decreetal order dated 19.12.2022 made in I.A No. 560 of 2021 in O.S No. 28 of 2014 on the file of the Principal District Munsif Court, Ulundurpet.

2. The petitioner herein filed I.A No. 560 of 2021 in O.S No. 28 of



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2014, to condone the delay of 2167 days for filing the petition to set aside the exparte decree before the Principal District Munsif Court, Ulundurpet.

After considering the submissions on either side the Court below dismissed the said application. Challenging the petitioner filed this petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. On seeing the facts of the case, it reveals that the petitioner's father filed a suit for partition claiming half share in the suit property. At that time the suit was filed against the first defendant Raja and also the present petitioner was minor/second defendant. As a father, the second respondent/plaintiff conducted the suit. Thereafter, due to jaundice the petitioner's father was not able to follow the proceedings and the exparte decree was passed against the petitioner. Further, it is a suit for partition, every interested deemed to be a plaintiff. Hence, the petitioner is entitled to put forth his claim in respect of the suit property. But the above aspect was not considered by the Trial Court and also if the opportunity is not given to the petitioner his valuable right to defend the case will be defeated. Accordingly, order passed by the Trial Court in I.A No. 560 of 2021 in O.S No. 28 of 2014 is set aside. Thus, I.A No. 560 of 2021 is allowed.



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However, the respondent has filed the application for appointing advocate commissioner for final decree proceedings. Hence, this court impose a cost of Rs.15,000/- to the petitioner payable to the respondents' counsel, on payment of such amount, the Trial is directed to proceed with the Trial and dispose of the same within a period of two months from the date of receipt of a copy of this order.

5. In result, this civil Revision petition is disposed of. Consequentially, connected miscellaneous petition is closed.

24.11.2023

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To

1. The Principal District Munsif Court, Ulundurpet.

T.V.THAMILSELVI,J.

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