



CRP.No.894 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

CORAM : JUSTICE **N.SESHASAYEE**

CRP.No.894 of 2016
and CMP.No.4901 of 2016

1.Sambhavi
2.Bhargavi
3.Venkatesh Babu
4.Vaishnavi ... Petitioners / Petitioners /
Defendants 6 to 9

Vs.

1.C.Santhanam
2.C.M.Govindarajulu Naidu (Died)
3.Rajalakshmi @ Rajiv
4.Vasavi ... Respondents 1-4 / Respondents /
Defendants 2,4 & 5
5.Leelavathi
6.Chithra
7.Nayanthara ... Respondents 5 to 7

[R5 to R7 impleaded as per order dated
30.03.2023 in CMP.No.4420 of 2023]

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order and decree dated 23.11.2015 made in I.A.No.588 of 2009 in O.S.No.54 of 1976 on the file of the Principal District Munsif, Cuddalore.



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For Petitioners : Mr.D.Ravichander

For Respondents : R2 - No Appearance
R3 - Died
R1 & R4 - Service awaited

ORDER

The defendants 6 to 9 in O.S.No.54 of 1976 are the revision petitioners herein. The revision arises out of an application to set aside the exparte decree passed under Order 17 Rule 2 CPC.,

2. The facts that led up to the filing of the present civil revision petition may now be bullet pointed:

- A certain Munuswamy Naidu possessed the properties described in plaint 'A' and 'B' schedules. A-schedule properties are admittedly his ancestral properties, and according to Munuswamy, B-schedule properties are his personal properties.
- Munusamy Naidu is the first defendant in the suit. He had two sons namely Govindarajulu Naidu (the second defendant), and one Dayalu. Dayalu had passed away and his heirs are defendants 3 to 9. The plaintiff is the only son of the second defendant



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- According to the plaintiff, A-schedule properties are the ancestral properties in the hands of the first defendant, and the three items of properties described in B-schedule were purchased by the first defendant, out of the income from the A-schedule property and hence, they also partake the character of ancestral properties.
- The first defendant had filed his written statement wherein he had contended that the second defendant had already released his 1/6th share in A-schedule property in his favour vide release deed dated 07.10.1971. This apart, the first defendant had settled a portion of Item 1 in B-schedule in favour of the plaintiff by settlement deed dated 14.01.1974, marked as Ext.B28. He disputed the plaintiff's right to seek partition.

3. The present suit was tried along with another suit in O.S.No.237/1976, which was filed by defendants 3 to 9 herein, against the second defendant. During trial, both sides have produced voluminous documentary evidence, and after trial, the suit in O.S.No.54/1976 came to be dismissed, whereas the suit in O.S.No.237/1976 was decreed by the trial Court vide its common judgment dated 26.06.1980.



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4. Challenging the decree passed in the partition suit in O.S.No.54/1976, the plaintiff has preferred A.S.No.1053/1980. And the second defendant, the father of the plaintiff challenged the decree passed in O.S.No.237/1976 in A.S.No.682/1982. Before the appellate Court, applications were filed for production of additional documents under Order 41 Rule 27, as a consequence of which, the first appellate Court remanded the matter back to the trial Court.

5. Post remand, the trial Court took up the matter on 12.08.1996. When the case was taken up by the trial Court, the defendants 3 to 9 (revision petitioners herein) did not appear in O.S.No.54/1976. And it may have to be stated on the very date when it was taken up by the trial Court, their counsel had reported that he had no instructions in the matter. Hence, the revision petitioners were set exparte, and consequently O.S.54 of 1976 came to be decreed exparte without the participation of the revision petitioners (defendants 3 to 9). It may have to be stated that by this time, the first defendant who contested the suit had passed away.



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6. According to the revision petitioners, they came to know about the preliminary decree passed only after they were served with notice of final decree application in I.A.No.492 of 2000. They almost immediately filed I.A.No.586 of 2009 for condonation of delay in filing their application for setting aside the exparte decree passed in O.S.No.54/1976. The principal grounds on which this application was filed are :

- (a) after remand, no notice was served on the revision petitioners as contemplated in procedure;
- (b) that when once the counsel had informed no instruction from his parties, the Court at least ought to have issued notice to the parties, more so where the Court has not chosen to issue notice of remand on the revision petitioners; and
- (c) thirdly, irrespective of the aforesaid two facts, the revision petitioners were minors at that relevant time, and they did not have an opportunity to defend the case, and therefore the Court ought to have appointed a guardian for them to proceed with the case, and that was not done.



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7. The trial Court dismissed the said application vide its order dated 23.11.2015. Hence the revision. Notice of civil revision was served on the 1st respondent/plaintiff, and he did not chose to enter appearance and his name is also seen printed in the cause-list.

8. Heard Ms.Nivetha for Mr.D.Ravichandran,learned counsel for the revision petitioners, who narrated the facts as mentioned above.

9. This Court finds every reason to interfere with the impugned order of the learned trial Judge. This Court is disappointed that the trial Court appears not to have considered that the the principal statement on the fairness of judicial proceedings is in complying with the rule of *audi alteram partem*. Added to this is the maxim *actus curiae neminem gravabit*. When the trial court at the first instance proceeded with the O.S.54 of 1976 without ensuring, or to order notice to them when their counsel informed the Court that he had no instructions on the very date on which the suit was posted before the trial court post remand, then it denied itself an opportunity to abide by its duty cast under the first



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maxim. Not all was lost to the trial court to redeem the situation but it appears to have missed this opportunity when it dismissed the application for setting aside the exparte decree without owning up its mistake. Thus, the second maxim is also ignored.

10. To conclude this Court is constrained to interfere with the impugned order of the trial court passed in I.A.No.588 of 2009 in O.S.54 of 1976, and allows this petition. Since this suit is close to half a century now, this Court directs the first Court to explore any possibility of an amicable settlement through any of the ADR techniques, and if they all fail, then to try and dispose of the suit within a period of six months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
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N.SESHASAYEE.J.,

ds

To:

- 1.The Principal District Munsif
Cuddalore.
- 2.The Section Officer
VR Section, High Court, Chennai.

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