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C.R.P.No.2266 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.2266 of 2019

and

C.M.P.No.14760 of 2019

Devaraj

....

Petitioner

Vs

Rintu Kanu Pandya,
rep by his Power Agent
Narendra Soma Bhai Patel

....

Respondent

Prayer:- Civil Revision Petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order passed in I.A.No.607 of 2018 in O.S.No.177 of 2012 dated 27.03.2019 pending on the file of the Sub Court, Udumalpet, Tiruppur District by allowing the Civil Revision Petition.

For Petitioner : Mr.N.Umapathi
For Respondent : Mr.V.Anandhamurthy

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 27.03.2019 passed in I.A.No.607 of 2018 in O.S.No.177 of 2012 pending on the file of the Sub Court, Udumalpet,



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Tiruppur District, thereby dismissing the petition to condone the delay of 447 days in filing the petition to set aside the ex-parte decree.

2. The petitioner is the defendant in the suit filed by the respondent for partition. On receipt of the suit summon, the petitioner failed to appear before the Trial Court and as such, he was set ex-parte and an ex-parte decree was passed on 16.02.2017. Pending final decree application, the petitioner filed a petition to set aside the ex-parte decree with a delay of 447 days.

3. A perusal of the affidavit filed in support of the condone delay petition shows that he suffered with Jaundice and as such, he went for treatment from the traditional method. Therefore, he was not able to contact his counsel and as such, there was a delay in filing the petition to set aside the ex-parte decree.

4. A perusal of the plaint reveals that the suit property, admittedly, was jointly purchased by the petitioner and the respondent herein. Therefore, the respondent is entitled for $\frac{1}{2}$ share in the suit property. The Trial Court passed preliminary decree and called both the



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petitioner and the respondent are each entitled to half share in the suit property. Therefore, no purpose would be served by setting aside the ex-parte decree. That apart, now the respondent filed a petition for final decree, in which an Advocate Commissioner was appointed. The Advocate Commissioner is about to file his report.

5. In view of the above, this Court finds no infirmity or illegality in the order dated 27.03.2019 passed in I.A.No.607 of 2018 in O.S.No.177 of 2012 on the file of the Sub Court, Udumalpet, Tiruppur District. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

05.01.2023

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
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To

The Subordinate Judge,
Udumalpet,
Tiruppur District.



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G.K.ILANTHIRAIYAN, J.

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