



C.R.P(PD)No.2134 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P(PD)No.2134 of 2020
and C.M.P.No.13555 of 2020

1.Yogambal @ Logambal
2.Ranganayaki
3.Jegathambal

...Petitioners

Vs.

A.R.Vivek

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the Fair and Final Order dated 13.02.2020 made in I.A.No.10 of 2020 in O.S.No.284 of 2010 on the file of the Court of the II Additional District Munsif, Erode.

For Petitioners : Mr.C.E.Pratap

For Respondent : Mr.M.Guruprasad

ORDER

This Civil Revision Petition has been filed to set aside the Fair and Final Order dated 13.02.2020 made in I.A.No.10 of 2020 in O.S.No.284 of 2010 on the file of the II Additional District Munsif Court, Erode.

2.Learned counsel for the petitioners submitted that the Court



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below had committed an error apparent in dismissing the interlocutory application filed by the petitioners under Order IX, Rule 7 C.P.C. to set aside the exparte order passed against them on 05.11.2012 and to receive the written statement filed along with the petition. Further, in respect of the portion of the suit property, the petitioners and their sisters have already filed a suit for partition in O.S.No.394 of 2008 before the learned II Additional Subordinate Judge, Erode and since the petitioners had proceeded with the said suit, they have not filed the written statement and hence an exparte order was passed against them on 05.11.2012.

3.He further submitted that a compromise final decree has been passed on 27.04.2016 in the suit filed by them in O.S.No.394 of 2008 and the shares of the petitioners had been separately allotted to them, the petitioners under bonafide impression that the matter had attained finality had not taken any steps to set aside the exparte order passed against the petitioners on belief that the lis came to be finally decided.

4.Learned counsel for the respondent has filed a counter in I.A.No.10 of 2020 in O.S.No.284 of 2010, wherein it has been stated that the petition to set aside the exparte order passed on 15.11.2012 is not



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maintainable. The defendants 18 to 20 were not originally parties to the above suit. They voluntarily filed a petition to implead themselves through I.A.No.952 of 2010. These petitioners/defendants 18 to 20 have been watching the proceedings discreetly waiting till the end stage of this case and have come forward with this frivolous petition. At this juncture, the defendant's witness, DW21 is on the box and the cross examination by all the parties is also nearing completion.

5.Heard learned counsel for the petitioners and learned counsel for the respondent and perused the materials available on record.

6.On going through the typed set of papers, it is seen that the cause of action for the suit in O.S.No284 of 2010 arose when the said Chinnammal died leaving her properties to be inherited by her sons and daughters, on 04.10.1929 when the said Ramasamy Mudali purchased the shares of other co-shares upon the death of the said Ramasamy Mudali leaving his legal heirs to inherit his property and upon the death of the said Subramani, the only son of the deceased Ramasamy Mudali leaving his widow and son to inherit his property; upon the birth of the plaintiff acquiring a birth right in the family properties; all subsequent dates he



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has remained in joint possession of the property. The plaintiff is not satisfied with the way the first defendant is managing the properties including the plaintiff's share. The second and third defendants are dependent on the first defendant and they are in no position to question the activities of the first defendant. As the plaintiff raised questions about the mismanagement of affairs of the family properties, the first defendant was trying to dispose of the entire extent in S.F.No.1070B (now R.S.No.141/4, 5, 6, 7 and 8). The first defendant is acting hand in glove with the defendants 8 to 15 and has been consistently acting against the interest of the plaintiff and other co-sharers with a view to grab the entire extent and share among themselves.

7.Hence the suit in O.S.No.284 of 2010 has been filed by the respondent herein to divide the suit property into 20 equal shares and allot three such shares to the plaintiff and put him in possession of the same. The petitioners herein were not originally parties to the suit, they had voluntarily filed a petition to implead themselves and are impleaded as defendants 18 to 20 in the above suit by order dated 13.03.2012. The petitioners have not taken any steps to file written statement after impleading themselves. Hence, they were set exparte on 05.11.2012.

8.The petitioners would state that a partition suit in O.S.No.394 of



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2008 was filed by the petitioners in respect of portion of the suit property and a compromise final decree has been passed on 27.04.2016. Since compromise decree has been passed and shares has been allotted to the petitioners, they were under a bonafide impression that the present suit has also attained finality. Hence due to non-filing of written statement, the petitioners were set exparte on 05.11.2012. The petitioners would further state that they have a valid defense and they would be put into hardship if the present petition is not allowed.

9.Hence I.A.No.10 of 2020 was filed by the the second petitioner who is the 19th defendant in the suit, the first and third petitioners are her sisters and the petitioners are defendants 18 to 20 in the suit.

10.On perusal of the records, it is evident that the cross examination of all the parties are nearing completion and the petitioners have not taken steps to file the written statement for all these years. Suddenly, the petitioners come forward with a petition to set aside the exparte order which was passed on 05.11.2012 that too after a lapse of 2600 days i.e. nearly 10 years. The petitioners had missed the bus.



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Admittedly, there is a delay of 2600 days, the same is not acceptable by this Court and initially the petitioners have not impleaded as a party to the proceedings and after impleaded, they should have filed the Written Statement before this Court. These frivolous facts that they are not aware of all these aspects are not accepted by this Court.

11.Considering the above facts and circumstances of the case and the submission made by the learned counsel on either side, this Court is not inclined to set aside the order passed by the trial Court and accordingly, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral citation: Yes/No
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V.BHAVANI SUBBAROYAN, J.

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