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CRP.No. 2593 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

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and

CMP.No. 16029 of 2023

- 1.Vittal
- 2.Pria Ashok
- 3.Vittal Murali
- 4.Sandiya
- 5.Vidya Arasu

...Petitioners
(Defendants 3 to 7)

Versus

G. Ramaniraju

.. Respondent (Plaintiff)

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C, prays to set aside the order dated 06.04.2023 in I.A.No. 2 of 2022 in O.S.No. 1471 of 2019 on the file of the XVI Additional City Civil Court, Chennai.

For Petitioners : M/s.Girija Velmurugan

For Respondent : Mr.J.R.K. Bhavanantham



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ORDER

This Civil Revision Petition has been filed seeking to set aside the order dated 06.04.2023 in I.A.No. 2 of 2022 in O.S.No. 1471 of 2019 on the file of the XVI Additional City Civil Court, Chennai.

2. Heard both sides and perused the records.

3. On a perusal of the records, it is seen that the respondent/plaintiff has filed a suit in O.S.No. 1471 of 2019 before the XVI Assistant City Civil Court, Chennai, for preliminary decree for partition and separate possession. After perusing the records, the trial Court passed an ex-parte decree dated 21.04.2022 for non-filing of written statement by the defendants 3 to 7. Subsequently, the petitioners/defendants 3 to 7 have filed I.A.No. 2 of 2022 under Section 5 of the Limitation Act, seeking to condone the delay of 49 days for filing the petition to set aside the exparte decree in the suit, dated 21.04.2022. After analyzing the records, the trial Court dismissed the application by order dated 06.04.2023. Aggrieved by the said order, the



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petitioners/defendants 3 to 7 have come forward with the present Civil Revision Petition.

4. The contention of the petitioners/defendants 3 to 7 is that the reason for non filing of written statement stated in the petition due to the Pandemic situation Covid-19, the matter was adjourned by the trial Court but next adjournment date has not been updated by the Advocate clerk and hence, he was unable to trace out the case bundle as he was in quarantine. Pursuant to the same, they came to know that the petitioners/defendants were set ex-parte on 04.09.2021 and ex-parte decree was passed on 21.04.2022. Hence, the delay of 49 days was caused to file the set aside application. Therefore, non filing of the written statement by the petitioners/defendants 3 to 7 is neither willful nor wanton. Therefore, the petitioners pray to set aside the findings of the Trial Court.

5. The contention of the respondent/plaintiff is that the respondent/plaintiff has seriously objected that the reason for the delay of 49 days was not properly explained. Further, PW1 was examined on



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01.03.2022 and exparte decree was passed on 21.04.2022. Further, it is evident that there was no representation on the side of the petitioners/defendants 3 to 7. However, the intention of the petitioners/defendants is to protract the proceedings and hence, the reason adduced was untenable. Hence, the delay of 49 days has not been properly explained and the delay is only to protract the proceedings. Hence, the respondent/plaintiff prays to dismiss the above Revision.

6. The Trial Court failed to appreciate that there is a Will dated 09.10.1999 which was executed by the said late C.Saraswathi Bhai, that the suit schedule mentioned property should be acted upon by the relevant legal heirs according to the said Will. The Trial Court has failed to consider the Will as it clearly states that Flat No. 15 in the suit property belongs to the petitioners/3rd to 7th defendants as there was a delay in filing the application to probate the Will, the respondent/plaintiff purposefully filed the suit for partition to grab the share of the defendants in the property, without considering this, the Trial Court erroneously dismissed the set aside application. The Trial Court ought to have allowed the petition seeking condonation of delay in filing the petition to



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set aside the ex-parte decree dated 04.09.2021. The Trial Court ought to have held that there is sufficient cause shown by the petitioners/defendants to condone the delay and the Trial Court has not given sufficient opportunities to prove their case. Therefore, one more opportunity should be given to prove their case by letting evidence. Therefore, the Trial Court has erroneously come to the conclusion and it warrants interference of this Court. Hence, this Court is inclined to allow the above Civil Revision Petition.

7. Accordingly, the Civil Revision Petition is allowed by setting aside the fair and decretal order dated 06.04.2023 in I.A.No. 2 of 2022 in O.S.No. 1471 of 2019 on the file of XVI Additional City Civil Court, Chennai. Consequently, connected Miscellaneous Petition is closed. No costs.

10.08.2023

Index :Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
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V.BHAVANI SUBBAROYAN, J.

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To

1. The XVI Additional Judge, City Civil Court, Chennai.
2. The Section Officer, High Court, Madras.

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