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C.R.P.No.3739 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

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

C.R.P.No.3739 of 2023
and
C.M.P.No.23307 of 2023

D.Saroja

... Petitioner

-Vs-

1.T.Saroja

2.Nirmala

3.R.Subramani

4.Revathi

5.Sangeetha

6.Ponnayee Ammal @ Ponnammal

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C.,
praying to set aside the fair and final order dated 04.09.2023 passed in
I.A. No.5 of 2022 in O.S. No.243/2012 on the file of District Munsif
Court, Perundurai and allow the C.R.P.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondents : Mr.C.Munusamy for R1



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C.R.P.No.3739 of 2023

ORDER

Challenging the impugned order passed in I.A.No.5 of 2022 in O.S.No.243 of 2012 by the learned District Munsif, Perundurai, the Revision Petitioner/4th defendant preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the 1st respondent/plaintiff filed a suit in O.S.No. 243 of 2012 against the defendants for the relief of partition claiming 1/3rd share in the suit property. However, father of plaintiff died. In that suit, initially, the defendants appeared through their counsel, but remains exparte. So, the trial court passed an exparte decree on 23.04.2018 allotting 1/3rd share in favour of plaintiff. Based on the preliminary decree, the plaintiff filed an application in I.A.No. 387 of 2018 to pass a final decree. At that stage, the 4th defendant filed an application to set aside the exparte decree, but there is a delay of 1443 days and to condone the delay, she filed an application in I.A.No.5 of 2022 stating that she is aged about more than 60 years and due to age-old ailment, she was not able to follow



C.R.P.No.3739 of 2023

the proceedings, however, her daughters/5th and 6th defendants also assured that they would take care of suit, but due to family situation, they are also not able to follow the proceedings. S, she is not able to appear on that day. Now only they came to know about the exparte decree and filed the application to set aside the exparte decree. That application was strongly resisted by the plaintiff stating that though they have appeared through their counsel, they purposely failed to appear for subsequent hearings and also in order to drag on the proceedings, after the appointment of advocate commissioner in the final decree application, they came forward with the said application, which is not permissible. On considering both side submissions, the trial judge held that the reason for the delay was not sufficiently explained and the reasons assigned by the daughters that due to family situation, they are not able to take care of the suit proceedings, which is not acceptable one, accordingly, the said application was dismissed. Aggrieved over the said findings, the Revision Petitioner/4th defendant preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that she is aged about more than 60 years and she is depending on her daughters,



C.R.P.No.3739 of 2023

who are also defendants in the suit, but due to family circumstances, they are not able to follow the proceedings. So, she is not aware of the exparte decree and on coming to know about the same, she immediately filed the said application. But, without considering her submissions, the trial judge erroneously dismissed the application. Hence, he prayed to set aside the findings of trial judge.

5. The learned counsel for the 1st respondent/plaintiff would submit that at the earlier occasion, one of the daughter, 6th defendant filed an application to condone the delay of 1208 days to set aside the exparte decree and that application was dismissed. Now, the Revision Petitioner has filed the said application, though she knew about the entire proceedings. So, as on date, the exparte decree was not set aside. After that, now the Revision Petitioner/mother filed another application in order to drag on the proceedings. Hence, he prayed to dismiss this Civil Revision Petition.

6. Records perused. On perusal of records, the suit was filed seeking for the relief of partition in the year of 2012 by the plaintiff against the



C.R.P.No.3739 of 2023

defendants, who are all one family deemed to be co-sharers. In the meanwhile, the 1st defendant died. Now, the 4th defendant filed an application to set aside the exparte decree when the application for advocate commissioner was filed. Admittedly, she is a illiterate woman, aged about more than 60 years and she is depending upon her daughters, who are the other defendants. But, due to lack of communication, she did not know about the proceedings. Furthermore, one of her daughter filed an application to set aside the exparte decree on the earlier occasion, which was dismissed. Now, this petitioner came to know about the proceedings and filed the said application along with condone delay. So, the reasons assigned by the Revision Petitioner is justifiable one. Therefore, on considering the age of the Revision Petitioner, this Court is inclined to allow the application to set aside the exparte decree along with condoning delay of 1443 days on condition that the Revision Petitioner shall pay a cost of Rs.10,000/- payable to the 1st respondent/plaintiff within a period of two weeks from the date of receipt of copy of this order, since because in the final decree application, the advocate commissioner is also appointed, and on such payment, the trial judge is directed to proceed with the trial in the suit in O.S.No.243 of 2012 and dispose the case within



C.R.P.No.3739 of 2023

period of three months. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No.5 of 2022 in O.S.No.243 of 2012 is set aside. All the parties are directed to cooperate with the trial proceedings. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

31.10.2023

Index : Yes/No
Speaking Order : Yes/No
rpp

To

The District Munsif, Perundurai.



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C.R.P.No.3739 of 2023

T.V.THAMILSELVI, J.

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C.R.P.No.3739 of 2023

31.10.2023