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C.R.P.No.4020 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM

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

C.R.P.No.4020 of 2017

Sekar

.. Petitioner

Vs.

1. Hariprasad

2. Saritha

3. R.Palanisamy

4. Malligarjuna Chetty

5. Kumaran

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of CPC to allow the above Civil Revision Petition against the Fair and Decreetal order of the Learned Principal District and Sessions Judge, Tiruvannamalai dated 03.08.2017 made in I.A.No.41 of 2017 in A.S.No.12 of 2013.

For Petitioner : Mr.Adarsh Subramanian

For R1 and R2 : Mr.S.Kaithamalai Kumaran

For R3 : Not ready in notice

For R4 and R5 : Notice Served
No appearance

ORDER

This Civil Revision Petition has been filed as against the Fair and Decreetal order dated 03.08.2017 made in I.A.No.41 of 2017 in A.S.No.12 of 2013 passed by the Learned Principal District and Sessions Judge,



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Tiruvannamalai, thereby dismissing the petition seeking to condone delay of 10 days in filing the petition to rehear the appeal.

2. The petitioner is the third defendant in the suit filed by the respondents 1 and 2 herein for declaration and partition. The said suit was contested by all the defendants and it was dismissed. Aggrieved by the same, the respondents 1 and 2 filed an appeal suit in A.S.No.12 of 2013. In the appeal, notices were duly served on all the respondents. Insofar as the petitioner is concerned, he was served notice and engaged a counsel and filed vakalat on 26.07.2013. However, on that date, the Presiding Officer was on leave and he resumed office only on 08.10.2013. On that date, the petitioner was absent and as such he was set exparte in the appeal suit. Therefore, the appeal was allowed by the Judgment and Decree dated 03.05.2017. Therefore, the petitioner filed a petition under Order 41 Rule 21 to rehear the appeal with the delay of 10 days in filing the petition to rehear the appeal. It was dismissed. Hence, this revision.

3. The learned counsel for the petitioner would submit that the petitioner only duly contested the suit filed by the respondents 1 and 2 herein for declaration and partition before the Trial Court and the suit was dismissed. Unfortunately, in the appeal suit, though, he filed vakalat on 26.07.2013, before



the Registry, it was not taken on file by the Appellate Court and he was set exparte. Therefore, the petitioner may be given one more opportunity to defend the appeal, since the suit was dismissed on merits.

4. The learned counsel for the respondents 1 and 2 would submit that though the petitioner was set exparte on 08.10.2013, the appeal was allowed only by the Judgment and Decree dated 03.05.2017. Even assuming that the petitioner had filed vakalat as early as on 26.07.2013, he did not even take care about the appeal suit and failed to verify the appeal through his counsel. The appeal suit was pending for four years and only on 03.05.2017, it was allowed. Therefore, though the petitioner filed a petition to rehear the appeal with a delay of 10 days, he kept quiet for four years after setting him exparte in the appeal suit. Therefore, the first appellate Court dismissed the petition and it does not warrant any interference by this Court.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2.



6. The respondents 1 and 2 filed a suit for declaration and partition as against four defendants in which, the petitioner is the third defendant. The said suit was duly contested and the same was dismissed by the Judgment and Decree dated 18.01.2013. Aggrieved by the same, the respondents 1 and 2 herein filed an appeal suit. In the appeal suit, all the respondents were duly served with the notice and on receipt of the same, the petitioner herein engaged a counsel and filed a vakalat before the Registry of the Appellate Court on 26.07.2013.

7. A perusal of records revealed that no such endorsement was made by the Appellate Court as if the vakalat was filed by him on 26.07.2013. Therefore, the first Appellate Court passed an exparte decree on 08.10.2013. It is further revealed that the vakalat was filed before the Registry on 23.07.2013 as if the date of hearing was on 26.07.2013 and 13.09.2013. On such dates, no appeal was posted for hearing. That apart, a perusal of Judgment and Decree in A.S.No.12 of 2013, it is very clear that it was passed on merits and the respondents 1 and 2 were allotted 1/3rd share in the suit schedule property. Further, he was set exparte on 08.10.2013. However, the appeal suit was allowed on 03.05.2017. The petitioner kept quiet nearly for four years, till the date of Judgment and Decree i.e.,03.05.2017. It shows that the petitioner had



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knowledge about the appeal suit filed by the respondents 1 and 2 herein and he wantonly failed to appear before the first Appellate Court.

8. Therefore, the Court below had rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below and this revision is liable to be dismissed.

9. Accordingly, this Civil Revision Petition is dismissed. No costs.

11.01.2023

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

The Principal District and Sessions Judge, Tiruvannamalai.

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