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C.R.P.Nos. 4467 & 4468 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No. 4467 & 4468 of 2017
and
C.M.P. Nos. 21089 & 21090 of 2017

Devadass Petitioner in CRP No.4467 of 2017

Tamilarasi Petitioner in CRP No.4468 of 2017

Vs

1. Selvarani

2. Kalaiselvi

.... Respondents in both CRPs

Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order dated 14.06.2017 passed in I.A.Nos.378 & 379 of 2015 in O.S.No.136 of 2013 on the file of the Subordinate Court, Mannargudi.

For Petitioner in both CRPs : Mr.T.Sezhian

For Respondents in both CRPs : No appearance

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decreetal order dated 14.06.2017 passed in I.A.Nos.378 & 379 of 2015 in O.S.No.136 of 2013 on the file of the Subordinate Court,



Mannargudi, thereby dismissing the petition to condone the delay in filing the petition to set aside the ex-parte decree.

2. Though notice has been served on the respondents and their name also printed in the cause list, there is no representation for the respondents either in person or through counsel.

3. The petitioners in both petitions are the fifth and sixth defendants in the suit filed by the respondents herein for partition in respect of the suit schedule properties. They purchased their respective property from the fourth defendant, which is subjected for partition. However, on receipt of suit summons, the petitioner failed to appear before the Trial Court and as such, they were set ex-parte and ex-parte decree was passed on 14.08.2014. Therefore, they filed a petition to condone the delay of 348 days in filing the petition to set aside the ex-parte decree.

4. A perusal of the affidavit filed by the fifth defendant reveals that he was suffered with Jaundice and he had taken country treatment. Therefore, he could not able to instruct his counsel to file



written statement in the suit.

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5. A perusal of the affidavit filed by the sixth defendant reveals that his daughter got married and as such he was busy with the marriage of his daughter. Therefore, he could not able to instruct his counsel to file written statement in the suit.

6. Admittedly, they had purchased part of the suit property from the fourth defendant. Therefore, they want to contest the suit on merits and in accordance with law. Hence, they may be given an opportunity of hearing in order to dispose the suit on merits and in accordance with law.

7. In view of the above, the order dated 14.06.2017 passed in I.A.Nos.378 & 379 of 2015 in O.S.No.136 of 2013 on the file of the Subordinate Judge, Mannargudi, is hereby set aside on condition that the petitioners shall pay the cost of Rs.5,000/- each to the respondents within a period of two weeks from the date of receipt of a copy of this order, failing which the order passed by this Court shall stand automatically cancelled. On such payment, the Trial Court is directed to set aside the



C.R.P.Nos. 4467 & 4468 of 2017

ex-parte decree and dispose of the suit within a period of six months,
thereafter.

8. In the result, these Civil Revision Petitions stand allowed.

Consequently, connected miscellaneous petitions are closed. No costs.

28.02.2023

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
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To
The Subordinate Judge,
Mannargudi.

G.K.ILANTHIRAIYAN.J,



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