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C.R.P.No.4563 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.R.P.No.4563 of 2017
and C.M.P.No.21523 of 2017

M/s.Siruvani Hardwares Park (P)
Ltd. Merged with Rakindo Kovai Township
Ltd. Rep. by its D.Sathyaseelan

... Petitioner

Vs.

1.Minor. Vishnu Nivethan
Rep. by his friend and guardian
Grand father Mr.P.Palanisamy

2.Minor K.B.Sivasurya
Rep. by their Next friend and
Grand father P.Palanisamy

... Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India, seeking to set aside the fair and decreetal order dated 01.03.2016 passed in I.A.No.163 of 2015 in O.S.No.164 of 2008 by the learned I Additional District and Sessions Judge, Coimbatore and allow the application for the document by allowing this C.R.P.



For Petitioner : Mr.S.S.Swaminathan
For Respondents : No Appearance

ORDER

The present revision is preferred by 2nd defendant, challenging an order dismissing his application for condonation of delay in filing another application for setting aside an exparte preliminary decree in a suit for partition.

2.The brief facts are:

- There are two items of properties and they are comprised in S.F.Nos.294 and 348. These two properties are the subject matter of a partition deed dated 08.12.2000. Under this partition, one half of the property was allotted to a certain Balakrishnan and another half was allotted to his co-sharer Shanmugasundaram.
- The revision petitioner herein is a private limited company. It first purchased the one half share of Shanmugasundaram and then proceeded to purchase the other half from Balakrishnan. After the



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purchase by the revision petitioner, Shanmugasundaram's son instituted O.S.No.163 of 2008 for partition on the ground that the Shanmugasundaram held the property obtained under the partition deed as an ancestral property.

- After the purchase from Balakrishnan, his minor sons through their grand father as a guardian, laid an identical suit in O.S.No.164 of 2008.
- So far as O.S.No.163 of 2008 is concerned, the summons was served on the revision petitioner and he entered appearance and contesting the suit. So far as O.S.No.164 of 2008 is concerned, according to the revision petitioner no summons was served on any of the officials of the company, but the bailiff concerned had made a false endorsement as if it was served.
- On coming to know about preliminary decree passed in O.S.No.164 of 2008, the revision petitioner who was arrayed as 2nd defendant moved



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the trial Court with the present application for condonation of delay of 2380 days. This came to be dismissed by the trial Court and the same is now under challenge in this revision.

3.Learned counsel for the revision petitioner submitted that the plaint in both O.S.No.163 of 2008 and O.S.No.164 of 2008, the address for service for the revision petitioner / 2nd defendant was identically given. However, on the date on which the suits were laid, the defendant had moved out of the address as given in the plaint to a new address. However, notwithstanding the fact the old address of the revision petitioner was given in the plaint, in O.S.No.163 of 2008, the bailiff served the summons at the new address of the revision petitioner and this summons was served on him on 17.03.2008. So far as the present suit in O.S.No.164 of 2008 is concerned, another bailiff of the Court claims that he had served the suit summons at the old address where the revision petitioner ran his business and this was on 02.04.2008. The learned counsel circulated certified copies of the summons served in both the suits.



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4.The respondents are served and they did not choose to enter appearance.

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5.It is intriguing that after service of summons in the new address of the revision petitioner that a bailiff of a Court could serve summons in O.S.No.164 of 2008, the old address that too after a month. It is not in dispute that the revision petitioner is contesting O.S.No.163 of 2008. Simple common sense would have guided the Court to understand that there is something not very appropriate happening in the Nazir section of the Court.

6.This Court finds every reason to interfere with the order of the trial Court and inclined to allow the civil revision petition.

7.The Principal District Judge, Coimbatore is now required to hold an enquiry either personally or nominate some other officer in his jurisdiction owing to the matter identify the erring bailiff and if he is still in service, to proceed against him departmentally.



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N.SESHASAYEE, J.

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8.In the result, this civil revision petition stands allowed. No costs.

Consequently, the connected miscellaneous petition is closed.

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Index : yes / no

Internet : yes / no

Speaking / Non Speaking order

To.

The I Additional District and Sessions Judge
Coimbatore

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