



C.R.P.(NPD).No.3969 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.10.2023

CORAM

THE HON'BLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD).No.3969 of 2019

and

C.M.P.No.26143 of 2019

Murugesan @ Murugan

... Petitioner/Petitioner/
2nd Defendant

VS

Murugammal

... Respondent/Respondent/
Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the fair and decreetal order dated 12.09.2019 made in I.A.No.506 of 2018 in O.S.No.58 of 2006 on the file of the District Munsif Court, Dharmapuri by allowing this Civil Revision Petition.

For Petitioner : Mr.T.Balaji
For Respondent : M/s.K.Poomalai



C.R.P.(NPD).No.3969 of 2019

ORDER

WEB COPY

This Civil Revision Petition arises against the order dated 12.09.2019 passed in I.A.No.506 of 2018 in O.S.No.58 of 2006 on the file of the District Munsif Court at Dharmapuri.

2. O.S.No.58 of 2006 is a suit for partition filed by the respondent herein seeking 1/8th share in the suit schedule mentioned property. A written statement was filed by the fourth defendant to the said suit on 11.08.2006. Thereafter, the defendants 1, 2, 5, 6 and 7 did not contest the same. Pending the litigation, the third defendant died and his legal representatives were impleaded as defendants 10 to 14. The defendants 10 and 14 contested the suit. In fine, of the 14 defendants, the defendants 4, 10 and 14 contested the suit and it resulted in the suit being decreed.

3. After the suit was decreed, the civil revision petitioner/second defendant filed an application in I.A.No.506 of 2018 seeking to condone the delay of 1345 days in filing an application to set aside the ex-parte decree. The



C.R.P.(NPD).No.3969 of 2019

reason given for filing this application for delay was that the papers were handed over to the third defendant Arumugam and Arumugam having died, there was no one to contest the proceedings and hence, the defendants were set ex-parte. This was hotly contested by the plaintiff, who brought to the notice of this Court that summons were served on the second defendant. The third defendant had passed away and his legal representatives have contested the suit and there is no sufficient cause of the purpose of condonation of delay. The fourth defendant entered the witness box and admitted to the fact that the summons were served on him.

4. The learned Trial Judge, by an order dated 12.09.2019 passed in I.A.No.506 of 2018, dismissed the application under Section 5 of the Limitation Act, against which the present Civil Revision Petition has been preferred.

5. At the time of hearing, I noticed the fact that all the parties to the proceedings have not been impleaded to the application. In a suit for partition, every party is deemed to be a plaintiff. Unless and until all the parties are before the Court, if I were to set aside the ex-parte decree against one, it might



C.R.P.(NPD).No.3969 of 2019

result in re-opening of the decree. That cannot be done when proper and necessary parties are not before the Court. Apart from that, the second defendant having accepted that the summons were served on him and the further fact that the third defendant Arumugam's legal representatives had entered appearance, contested the suit and had suffered a decree on merits, it is hardly possible to accept the case of the civil revision petitioner that he expected Arumugam to follow up the case. When Arumugam's family have contested the suit, the second defendant ought to have been diligent to follow up the case with the legal representatives of Arumugam. Therefore, the order of the Trial Court in dismissing the application under Section 5 of the Limitation Act does not require any interference and accordingly, it is confirmed.

6. At this stage, Mr.T.Balaji, learned counsel appearing for the petitioner submits that the petitioner may be permitted to file an appeal before the Subordinate Court as against the judgment and decree in O.S.No.58 of 2006 dated 28.08.2014.



C.R.P.(NPD).No.3969 of 2019

7. As per the explanation to Order 9 Rule 13 CPC, if an appeal is preferred as against the ex-parte decree, the defendant is not entitled to file an application under Order 9 Rule 13 CPC. However, if an application under Order 9 Rule 13 CPC is filed and dismissed, it does not bar the aggrieved person to maintain an appeal against the decree. Consequently, there is no legal bar for the civil revision petitioner to prefer an appeal against the judgment and decree in O.S.No.58 of 2006 dated 28.08.2014. The period for which the petitioner was prosecuting this Civil Revision Petition, i.e., from 28.11.2019 till the date of receipt of a copy of this order, shall stand excluded.

8. With the above observations, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

31.10.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Lm



C.R.P.(NPD).No.3969 of 2019

To
WEB COPY

The District Munsif Court,
Dharmapuri.



WEB COPY



C.R.P.(NPD).No.3969 of 2019

V.LAKSHMINARAYANAN,J.

Lm

C.R.P.(NPD).No.3969 of 2019

31.10.2023