



CRP. No.1840 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

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

CRP. No. 1840 of 2019

1.Saroja
2.Sakunthala

.... PETITIONERS

Vs

1 SHANMUGAM
2 RAMALINGAM
3 GNANAMANI
4 SANTHA
5 VANAJA
6 KALAIMANI
7 THE SUB REGISTRAR

....RESPONDENTS

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC, against the fair order and decretal order in I.A No. 98 of 2013 in unnumbered A.S /2013, on the file of the Subordinate Court, Chidambaram,



CRP. No.1840 of 2019

Dated 20.04.2018.

For Petitioners : Mr.S.Shanmugam
For R1 to R5 : Exparte
For R6 : P.Muthukumarasamy
For R7 : P.Vijaya Devi, Government Advocate.

ORDER

This petition has been filed against the fair and decreetal order in I.A No. 98 of 2013 in unnumbered A.S. No. /2013, on the file of the Subordinate Court, Chidambaram, dated 20.04.2018.

2. The petitioner herein are the defendants in suit O.S No. 73 of 1995 filed by the respondents 1 to 5 herein/plaintiffs for the relief of partition and claiming 1/7 share in the suit property, in the said suit the preliminary decree was passed and each 1/7 share was allotted to the plaintiffs and the defendants. Based on the preliminary decree, the first petitioner herein filed I.A No. 154 of 2002 for appointing advocate commissioner. Thereafter suit was transferred to District Munsif Court, Chidambaram and it was re-numbered as I.A No. 299 of 2004, in the said petition(old I.A No. 154 of 2002), one Ravichandran was appointed as Advocate Commissioner and he



CRP. No.1840 of 2019

submitted his report indicating mode of division by allotting an extent of 23 feet North to South and 18 $\frac{3}{4}$ feet East to West with a common passage four feet North to South and 132 feet East to West for which third respondent has no objection to commissioner report. In the meantime, the final decree petition had been transferred to the Principal District Munsif Court, Chidambaram as per amended Act.1/2004. While so, the respondent 1 to 5 in collusion with sixth respondent filed a petition in I.A No. 300 of 2004 to sold the suit property contrary to the previous advocate commissioner's report and for that petition new Advocate Commissioner was appointed and the sale was conducted the sixth respondent herein purchased the suit property under Court auction which is contrary to section 2 & 3 of partition Act. Further, the Advocate Commissioner report filed in I.A No. 154 of 2002 (New No. I.A NO. 299 of 2004) was not rejected nor set aside through any Court proceedings. In the building portion the petitioner with others were living for more than seven decades many of the provisions of the partition act was not followed by the lower Court in order passed in I.A No. 300 of 2002 after auction sale sixth respondent filed the petition for delivery of possession of the suit property as per the final decree order in I.A No. 300 of 2004 in the year of 2006 but the sixth defendant not



CRP. No.1840 of 2019

filed petition challenging the order of final decree in I.A No. 300 of 2004.

Aggrieved over the order passed in I.A No. 300 of 2004 the petitioner filed I.A No. 517 of 2005 and the same was dismissed, challenging the same the petitioner filed CMA No. 28 of 2006 on the file of Subordinate Court, Chidambaram, against the Court auction and the same was dismissed. In the meantime, the second petitioner herein preferred E.A No. 91 of 2012 to declare the final decree as null and void. In the meanwhile, the sixth respondent filed E.A No. 322 of 2006 for delivery of possession. Against which they preferred Civil Revision Petition before this Court, in CRP this Court directed the Court below to dispose E.A No. 91 of 2012 and 322 of 2006 within a month. Thereafter the petitioner filed CRP NO. 3776 of 2013 before this Court and the same was withdrawn. Due to the above process there is delay of 2655 days for filing the appeal. Hence the petitioners prayed to condone the delay of 2655 days for filing the appeal. The said application was objected by the respondents in that application respondents 1 to 5 remain exparte and sixth respondent auction purchaser contested the case and filed his objection as such is not maintainable. In pursuant to final decree passed in partition suit by appointing advocate commissioner property was sold through Court auction and portion of sale proceeds are



CRP. No.1840 of 2019

should be divided among the parties by the Court auction the sixth respondent was purchased the property for a sum of Rs. 23,50,000/- which was held on 27.06.2005 and the sale was on 09.08.2006, based on the sale entire proceeds were deposited in the Court, the petitioners filed this petition in order to drag on the proceedings. Further the respondent taken the delivery of the possession through Court on 21.10.2012. Hence prays to dismiss the petition..

3. After considering the oral and documentary evidence the Trial Judge, dismissed the said petition. Challenging the same, the petitioners filed this petition.

4. The learned counsel for the petitioner submitted that the lower Court erroneously dismissed the petition that there is no sufficient cause established for condonation of delay in filing the appeal as such is totally erroneous. Further, in the final decree, the advocate commissioner was appointed and he filed report. Meanwhile, the respondents filed I.A No. 300 of 2004 to sold the property to third parties and the same objected by the petitioners without Considering the objections and the pre-emptory right of the petitioners in suit property the Court ordered for sell the suit property which is possession of the petitioners. Subsequently, the petitioners



CRP. No.1840 of 2019

objected the Court sale as well as court purchase made by the respondent by preferring CMA and the same was dismissed hence CRP No. 1257 of 2009 was preferred. Immediately the final decree was passed based on E.P preferred by Court auction purchaser/sixth respondent herein. Hence, the petitioner taken steps to challenge the decree by filing petition under section 47 of CPC but it was not entertained on the ground that it does not come under the scope of such provision. As, the delay was caused only for the purpose of conducting the other legal proceedings which is similarly and legally available to the petitioners, without considering such aspect the court below concluded that the reason for delay is not furnished as such is total misconception of law and facts and prayed to set aside the same. Further, he submitted that after the final decree proceedings was challenged by this petitioner but the property was sold to the sixth respondent it was contrary to the Partition Act by way of I.A No. 300 of 2004 and the same was pending before this court still 2012. Due to pendency of the legal proceedings the petitioners not able to file the appeal but the Court below not have taken note of the fact. Further he submitted that final decree was challenged by way of several proceeding since 2006 hence the petitioner could not prefer the appeal during the pendency of this proceedings. Hence



CRP. No.1840 of 2019

the said delay is nor wilful nor wanton prayed to set aside the findings of the Court below.

5. By way of reply, the learned counsel for the sixth respondent submitted that the petitioners having knowledge about the passing decree as well as Court auction proceedings they have not prefer appeal in time, after 2955 days delays the appeal was preferred before the trial court which is contrary to law and the same was rightly appreciated by the Trial court needs no interference. Hence he prays to allow this petition.

6. Considering the submissions on either side, and also on perusal of records, it is true that respondent 1 to 5 filed a suit for partition claiming 1/7 share in the suit property against his brother and sisters in O.S No. 73 of 1995 on the file of Sub Court, Chidambaram and preliminary decree was passed by allotting 1/7 share to the parties. Thereafter, Advocate commissioner was appointed to apportion the property and he filed his report. In the meanwhile, the defendants 1 to 5 filed a petition to sold the property in spite of the objection raised by the petitioners and the property was sold through court auction to the sixth respondent herein and final decree was passed. The petitioners herein filed a petition against the final decree as well as court auction proceedings of the Court, the said



CRP. No.1840 of 2019

proceedings were admitted by the parties. After the Court auction, the Court auction purchaser/sixth respondent herein filed I.A for taking delivery of possession challenging the same petitioners herein filed petition and the same was not dismissed by the Court below and ordered for delivery of possession in favour of this 6th respondent. Further, dismissal application these petitioners preferred CRP before this Court and the same was dismissed. All these years, the petitioners followed the case and also filed the petition against the court auction and also final decree. The main grievance of the petitioner is that they living in the suit property for more than seven decades, admittedly they are having statutory right to prefer the appeal and when the defendants trying to sell the suit property based on the preliminary decree immediately petitioners challenging the said proceedings against it, as they were continuously raised their objection with regard to auction sale upto delivery of possession all these years petitioners challenged the proceedings initiated by the defendants and also by the Court auction purchaser in order to keep their right over the property. As the party, they are entitle to prefer an appeal the same cannot denied since because they are not filed the appeal in time. All these years they were follow the legal proceedings in order to protect their right by preferring



CRP. No.1840 of 2019

petitions instead of preferring appeal. Furthermore, the petitioners are aged persons are they living in family house/suit property they want to protect their share in the suit property even on perusal of old advocate commissioner report, it reveals that there is a possibility of one such share in the suit property was allotted to the petitioners which is feasible for their living. Admittedly, plaintiffs/respondents are the persons who are having right over the property but they should have given opportunity to the petitioners but they sold the property to the court auction purchaser as such is not appreciated by the Court below which needs interference. Further, It is true that they were challenging final decree and Court auction through legal proceedings without any delay and also appeal is statutory right given to the petitioner more particularly they are approaching the court for amicable division of the property it has not been suffered due to the proceedings conducted by the defendants. Further the passing of the final decree is totally perverse against which the petitioners can prefer appeal it is statutory right the same cannot be taken away any other. Therefore, valuable right of the petitioner shall not defeated. Hence this petition is allowed order of the Trial Court is set aside and 2655 days of delay is condoned. Further, the Court below is directed to take the case on file and



CRP. No.1840 of 2019

dispose the case after giving ample opportunity to the parties.

WEB COPY 7. In result, this petition is allowed. No cost. Consequentially,
connected miscellaneous petition is closed.

17.10.2023

pbl



WEB COPY



CRP. No.1840 of 2019

T.V.THAMILSELVI,J.

Pbl

CRP. No.1840 of 2019

17.10.2023