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C.R.P.No.193 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.193 of 2018

and

C.M.P.No.1087 of 2018

Govindhan

... Petitioner

Vs.

1.T.Santhi
2.L.Selvam
3.S.Velavan

...Respondenta

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decretal order dated 10.10.2017 in I.A.No.213 of 2012 in O.S.No.421 of 2007 on the file of the Principal District Munsif Court, Salem.

For Petitioner : Mr.D.Shivakumaran

For Respondent 1 &3 :Not ready in notice

For respondent 2 : Mr.S.Siva Shanmugam



ORDER

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The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner seeking to condone the delay of 988 days in filing petition to set aside the *exparte* decree passed against him on 15.04.2009.

2. The respondents herein filed a suit for partition against the petitioner and others. In the said suit, an *exparte* preliminary decree was passed on 15.04.2009. The petitioner filed application to set aside the *exparte* decree along with petition to condone the delay of 988 days in filing petition to set aside the *exparte* decree. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that he was not informed of the Court hearing date by his counsel and hence, he could not appear before the Court. It was further stated that he received notice in final decree application in I.A.No.1145 of 2009 and the same was also handed over to the counsel without knowing the legal implication of the same. It was also stated that he acquired knowledge about the *exparte* decree only when the Advocate Commissioner appointed in the final decree proceedings had visited the suit



property. Not satisfied with the reasons assigned by the petitioner, the Trial Court dismissed the condone delay petition. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that suit property originally belonged to petitioner's grand father Ayyamperumal Udayar and some of the items of the suit properties were settled by said Ayyamperumal Udayar in his favour under settlement deed dated 09.07.1971 and hence, the petitioner has got very good case on merits. The learned counsel further submitted that subsequent to the suit, the respondents prepared a release deed as if the petitioner and his sister executed release deed releasing their right over the suit properties in their favour and the evidence recorded in the connected suit for recovery of possession filed by the petitioner under Section 6 of Specific Relief Act would prove falsity of the release deed prepared by the respondents.

4. The civil revision petition is filed challenging the order passed by the Trial Court dismissing the condone delay petition filed by the petitioner in



seeking to set aside the *exparte* decree. It is seen from the records that this is the *exparte* decree passed against the petitioner for the 2nd time. Earlier, an *exparte* preliminary decree was passed against the petitioner on 26.10.2007 and the same was set aside on application filed by the petitioner. Again, the petitioner committed default and failed to appear before the Court and hence, the *exparte* preliminary decree was passed against the petitioner for the second time on 15.04.2009. It is also seen that petitioner received notice in the final decree petition filed by the respondent in I.A.No.1145 of 2009 and he failed to appear before the Court and as a consequence, he was set *exparte* in final decree proceedings also. The Advocate Commissioner, who was appointed in the final decree proceedings also filed his report on 10.08.2010. Thereafter, belatedly on 30.01.2012, the present application has been filed by the petitioner stating that he acquired knowledge about the *exparte* preliminary decree only when the Advocate Commissioner visited the suit property. The petitioner failed to appear before the Trial Court after receipt of notice in the final decree proceedings. An Advocate Commissioner was appointed and he also filed his report on 10.08.2010. In such circumstances, the explanation offered by the petitioner as if he acquired knowledge about the *exparte*



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preliminary decree only after visit of Advocate Commissioner to the suit property is not at all acceptable. The Trial Court considering the Court records and the conduct of the petitioner rightly came to the conclusion that he failed to show sufficient cause for condoning the huge delay of 988 days in seeking to set aside the *exparte* decree. I do not find any illegality or irregularity in the order passed by the Court below. Accordingly, the Civil Revision Petition stands dismissed.

5. As far as contentions raised by the learned counsel for the petitioner that release deed relied on by the respondents are bogus document, it is for the petitioner to work out his remedy in the manner known to law in a separate suit. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
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S.SOUNTHAR, J.

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To

The learned Principal District Munsif, Salem.

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