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C.R.P.No.1433 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

CORAM

THE HONOURABLE THIRU JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P.No.1433 of 2024
and CMP No.7681 of 2024

P.Uthamaraj

.... Petitioner

vs

1.Mrs.Maniammal

2.Rani

..... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 23.01.2024 made in I.A.No.1 of 2020 in O.S.No.240 of 2012 on the file of District Munsif Court, Mettupalayam.

For Petitioner : Mr.C.Prabakaran

For Respondents : Mrs.G.Lavanya
For Mr.T.Sai Krishnan

ORDER

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The Civil Revision Petition has been filed against the fair and decreetal order dated 23.01.2024 made in I.A.No.1 of 2020 in O.S.No.240 of 2012 on the file of District Munsif Court, Mettupalayam. dismissing the application filed under Section 5 of Limitation Act to condone the delay of 2057 days in filing the petition to set aside the exparte order dated 25.03.2014.

2. The petitioner is the defendant in O.S.No.240 of 2012. The suit has been filed by the maternal aunts of the petitioner/defendant to declare the settlement deed as null and void, for permanent injunction and also for partition of the suit property. The petitioner/defendant had entered appearance through his counsel on 19.07.2013 and thereafter, the petitioner had not filed his written statement and after granting several adjournments to him, an exparte order was passed on 25.03.2014 and thereafter, a preliminary decree was passed in the suit in O.S.No.240 of 2012 on 28.04.2014.

3. While the suit was posted for final decree proceedings, the petitioner had appeared through his counsel on 27.08.2019 and thereafter he had filed an



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application to set aside the exparte decree on 30.01.2020 with an application to condone the delay of 2057 days.

4. The petitioner had contended that before he was set ex parte on 25.03.2014, he met with an accident and suffered fracture in his legs and thereafter, the preliminary decree was passed in the suit on 28.04.2014. Again, he was affected with typhoid and jaundice on 20.06.2016 for four years and therefore, he was unable to file a petition to set aside the exparte order and therefore, there had been a delay of 2057 days in filing the petition to set aside the exparte order.

5. The trial Court, finding that the petitioner has not shown sufficient cause to condone the delay and the delay has not been properly explained, dismissed the petition. Challenging the said order, the present Civil Revision Petition has been filed.

6. Learned counsel for the petitioner submits that the petitioner has got a



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good case in the suit. He also submits that the petitioner's grand father has already executed a settlement deed in his favour and that the trial Court has not taken into consideration all these aspects.

7. Per contra, learned counsel for the respondent/plaintiff submits that suit summons was served on the petitioner and he appeared before the court through his counsel on 19.07.2013 and thereafter, he did not appear and the trial Court, after giving sufficient adjournments, passed an exparte order on 25.03.2014 and a preliminary decree was passed in the suit on 28.04.2014. Subsequently, when the matter was posted for final decree proceedings, the petitioner had appeared through his counsel on 27.08.2019 and thereafter, after five months, he had filed an application to set aside the exparte decree on 30.01.2020 with a petition to condone the delay of 2057 days. The trial Court finding that the petitioner has not properly explained the delay and has not shown sufficient cause, dismissed the petition. Further, the learned counsel submits that there is no infirmity in the order passed by the trial Court and the petitioner, who is in possession of the property, is not allowing the old ladies, who are the plaintiffs, to enjoy the fruits of the decree.



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8. Heard both sides and perused the materials available on record.

9. A perusal of records would show that the petitioner had been served summons on 19.07.2013. He had appeared through counsel and thereafter, the petitioner had not filed his written statement and after grant of several adjournments, an ex parte order was passed on 25.03.2014 and thereafter, a preliminary decree was passed in the suit in O.S.No.240 of 2012 on 28.04.2014. While the suit was posted for final decree proceedings, the petitioner had appeared through his counsel on 27.08.2019 and he had not filed an application to condone the delay immediately and only after five months, filed an application to set aside the ex parte decree on 30.01.2020 with a petition to condone the delay of 2057 days.

A.D.JAGADISH CHANDIRA,J.,

SR

10. The trial court, finding that the petitioner has not filed any proof to



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show that he suffered fracture and also that he was suffering from typhoid and jaundice, rightly dismissed the application. I do not find any error or irregularity in the order passed by the trial Court in I.A.No.1 of 2020 in O.S.No.240 of 2012 and thereby the Civil Revision Petition is liable to be dismissed.

11. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2024

sr

Index:no
website:yes

To
The District Munsif Court, Mettupalayam.

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