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C.R.P.No.1353 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1353 of 2020

and

C.M.P. No.7559 of 2020

1. Amudha (died) W/o. Ponnusamy
2. P. Nandha Kumar S/o. Ponnusamy
3. P. Sivakumar S/o. Ponnusamy
[2nd and 3rd petitioners impleaded vide orders made
in CMP NO.23127 and 23129 of 2022 dated
05.01.2023]

... Petitioners

Vs.

Manoharan S/o. Vaiyapuri Gounder

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order of the learned Principal Subordinate Judge, Namakkal in I.A. No.4 of 2019 in O.S. No.239 of 2006 dated 16.12.2019.



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C.R.P.No.1353 of 2019



For Petitioners : Mr. S. Saravanakumar

For Respondents : Mr. T. Dhanyakumar

ORDER

The Civil Revision Petition is filed challenging the order passed by the trial Court dismissing the application filed by the petitioner seeking to condone delay of 1527 days in filing petition to set aside the exparte preliminary decree passed in the above suit.

2. The respondent herein filed a suit seeking relief of partition and separate possession, against the petitioner and others. The exparte preliminary decree for partition was passed against the petitioner on 10.03.2015. Thereafter, the respondent filed final decree petition in I.A. No.307 of 2016. It is seen from the records that notice in final decree petition was served on the petitioner on 28.06.2017. The petitioner put her signature at the backside of the Court notice acknowledging receipt of notice and copy of the petition. Even in the final decree petition, she remained exparte and thereafter the instant application has been filed to set aside the exparte preliminary decree only on 15.06.2019.



3. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that she is illiterate and not capable of understanding the suit summons. It was further stated that she had shown the papers received from the Court to her son Sivakumar and he promised to take care of it and believing his words, the petitioner kept quiet. Further she stated that she acquired knowledge about the exparte decree only after the visit of the Advocate Commissioner to the suit property for suggesting modes of division.

4. The Trial Court, not convinced with the reasons assigned by the petitioner, dismissed the condone delay petition and aggrieved by the same, the petitioner is before this Court.

5. The learned counsel for the petitioner submitted that the petitioner is an illiterate and hence an opportunity shall be given to her to contest the case on merits. The partition suit was filed by the respondent in the year 2006. The exparte decree was passed against the petitioner on 10.03.2015. As mentioned earlier, notice was served on the petitioner in the final decree petition on 28.06.2017. At least, after receipt of the notice in the final decree petition, the



petitioner should have taken steps to set aside the exparte preliminary petition.

Unfortunately she waited for nearly 2 years and filed the instant application only after the Advocate Commissioner filed his report and plan on 11.06.2019.

It is seen from the records that the present application to set aside the exparte preliminary decree was filed only on 15.06.2019 and therefore it is clear that the present application has been filed only after filing of the report by the Advocate Commissioner in the final decree petition.

6. Though the Trial Court has not passed a detailed order while dismissing the condone delay petition, as mentioned earlier, the petitioner received a notice in final decree petition as early as on 28.06.2017 and the instant application has been filed only on 15.06.2019. In such circumstances, the petitioner failed to show sufficient cause for condoning huge delay of 1527 days in filing petition to set aside the exparte preliminary decree.

7. Therefore, I do not find any error in the order passed by the trial



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Court. With these observations, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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To
The Principal Subordinate Judge, Namakkal.

S.SOUNTHAR, J.

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