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C.R.P.(NPD)No.3005 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.3005 of 2022

and

C.M.P.No.16244 of 2022

Dhamodharan

.. Petitioner

Vs.

1.Minor Raveendar

2.Minor Vaitheeswari

.. Respondents

Prayer : The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 13.07.2022 passed in I.A.No.02 of 2021 in I.A.No.01 of 2019 in O.S.No.135 of 2017 on the file of the learned Sub Ordinate Judge, Uthangarai.

For Petitioner : Ms.Monalisa
for Mr.R.Marudhachalamurthy

For Respondents : Ms.Ranjani
for Mr.K.Thiruvengadam



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ORDER

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2. O.S.No.135 of 2017 on the file of the Subordinate Court, Uthangarai is a suit for partition and for separate possession.

3. The petitioner before this Court is the second defendant. The plaintiffs seeks for 2/3rd share in the suit property. Pending the suit, as the defendant did not file a written statement, an *ex parte* decree was passed. The same was set aside in an application filed by the 2nd defendant in I.A.No.1 of 2019. The Court had set aside that *ex parte* decree on a condition that the petitioner pays a sum of Rs.3,000/- (Rupees Three Thousand only) on or before 05.01.2021. The petitioner did not pay the amount and hence, he filed an application for extension of time.

4. A detailed counter was filed stating that after *ex parte* decree was passed, the plaintiff had also taken out an application for passing of a final decree in I.A.No.782 of 2018. It was also brought to the notice of this Court



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that the petitioner/2nd defendant is a Government servant employed in the Agricultural Department. Therefore, they would state that it is unbelievable to hear that a Government servant is not in a position to pay a sum of Rs.3,000/- (Rupees Three Thousand only).

5. The learned Subordinate Judge at Uthangarai dismissed the application stating that no grounds had been made for grant of extension of time. Challenging the same, the present revision has been presented before this Court.

6. I heard Ms.Monalisa for Mr.R.Marudhachalamurthy appearing for the petitioner and Ms.Ranjani for Mr.K.Thiruvengadam appearing for the respondents and I have gone through the papers.

7. The records revealed that the *ex parte* decree was set aside on a condition that the petitioner pays a sum of Rs.3,000/- on or before 05.01.2021. However, giving a reason that there were family circumstances and hence, he could not pay the amount, the petitioner had taken out an application for extension of time.



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8. Being a Government servant, the petitioner should have been well aware of the consequences of the order. The bald reason that was given in the affidavit is not sufficient for the purpose of extension. Nonetheless, in order to give an opportunity to the petitioner to contest the proceedings, the Civil Revision Petition stands allowed.

9. Accordingly, the order passed by the learned Subordinate Judge at Uthangarai is set aside. The cost that was imposed in I.A.No.1 of 2019 is enhanced to a sum of Rs.10,000/- (Rupees Ten Thousand only) which shall be paid to each of the respondents within a period of eight weeks from the date of receipt of a copy of this order. On payment of the aforesaid cost, this Civil Revision Petition shall stand allowed and the order dated 13.07.2022 will be set aside. In case, the cost is not paid as aforesaid, this Civil Revision Petition will stand dismissed. Consequently, connected Civil Miscellaneous Petition is closed.

04.04.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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To

The Sub Ordinate Judge,
Uthangarai

C.R.P.(NPD)No.3005 of 2022

and

C.M.P.No.16244 of 2022

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