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C.R.P.No.2149 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2149 of 2020

Swaminathan S/o. Singaravelu

... Petitioner

Vs.

1. Allirani W/o. Singaravelu
2. Sumathy D/o. Singaravelu
3. Subhashini D/o. Singaravelu.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 13.06.2018 made in C.M.A. No.11 of 2013 passed by the learned Subordinate Judge, Chidambaram in confirming the fair and decreetal order dated 01.07.2013 made in I.A. No.91 of 2013 in O.S. No.7 of 2011 on the file of District Munsif cum Judicial Magistrate Court, Portnovo, Cuddalore District.

For Petitioners
For respondent

: K. Balu
: Mr. P. Sathishkumar
for M/s. M.R. Kuyilan [for R1 & R2]

Mr. L. Ashok Kumar
for M/s. D. Baskar [for R3]



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 to set aside the exparte decree.

2. The respondents herein filed a suit for partition and the same was resisted by the petitioner herein on the ground that the 1st respondent was not a legally wedded wife of the petitioner's father and hence the other respondents could not be treated as his legitimate children. It was also stated by the petitioner that the suit properties were ancestral properties of his father and hence the respondents cannot claim any right over the same.

3. The above suit was decreed exparte on 23.04.2013 owing to the non-appearance of the petitioner. The instant application has been filed seeking to set aside the exparte decree passed on 03.06.2013. In the affidavit filed in support of the petition seeking to set aside the exparte decree, it was averred by the petitioner that he was working as a teacher and during the month of April 2013, he was busy with annual exams and paper correction work. In



view of the busy schedule, he could not appear before the Court and hence ex parte decree was passed.

4. The Court below by taking into consideration the absence of the petitioner and his failure to cross examine PW1, dismissed the application. Aggrieved by the dismissal of the application by the Trial Court, the petitioner preferred an appeal in C.M.A. No.11 of 2013 before the First Appellate Court and the First Appellate Court confirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the same, the petitioner is before this Court.

5. The learned counsel appearing for the petitioner submits that taking into consideration the fact that the suit is filed for partition, the Court shall take liberal approach and shall give an opportunity to contest the case on merits.

6. Having regard to the fact that the petition has been filed by the petitioner to set aside the ex parte decree without any delay and also the fact



that the relief sought for in the Suit is partition, this Court is inclined to take liberal approach and to give an opportunity to the petitioner to contest the case on merits.

7. The petitioner has also filed written statement and raised triable issues. In such circumstances, the Civil Revision petition is allowed on conditions that

(i) *the petitioner shall deposit a sum of Rs.15,000/- (Rupees Fifteen Thousand only) to the credit of O.S. No.7 of 2011 on the file of the learned District Munsif and Judicial Magistrate, Parangipettai, Cuddalore District within a period of 3 weeks from the date of receipt of a copy of this order.*

(ii) *In case, the petitioner is failed to pay the cost, this Civil Revision Petition shall stand dismissed automatically.*

(iii) *In the event of payment of cost by the petitioner within the time stipulated, the ex parte decree passed against the petitioner stands set aside and the Trial Court is directed to dispose of the suit on merits as expeditiously as possible preferably within 6 months from the date of receipt of a copy of this order.*



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(iv) *The respondents 1 to 3 are entitled to withdraw the amount deposited by the petitioner by making a formal application before the Trial Court.*

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Index : Yes / No
Internet : Yes / No
mjs

To

1. The District Munsif and Judicial Magistrate, Parangipettai, Cuddalore District
2. The Subordinate Judge, Chidambaram.

S.SOUNTHAR, J.

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