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C.R.P.(MD)No.1411 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.1411 of 2023

and

CMP (MD) No.7034 of 2023

Sermaraj : Petitioner/Petitioner/
2nd Defendant

Vs.

1.Arumugasamy : 1st respondent/Respondent/
Plaintiff
2.Baskaran : 2nd Respondent/Petitioner/
1st Defendant

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to set aside the fair and decreetal order, dated 02/02/2023 passed in IA No.271 of 2021 in OS No.112 of 1999 on the file of the Sub Court, Kovilpatti and pass such furthers.

For Petitioner : Mr.S.Pon Senthil Kumar

For 1st Respondent : Mr.M.Vallinayagam
Senior Counsel
for Mr.D.Nallathambi

For 2nd Respondent : No appearance

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 02/02/2023 passed in IA No.271 of 2021 in OS No.112 of 1999 by the Sub Court, Kovilpatti.



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2. The facts in brief:-

The suit in OS No.112 of 1999 was filed by the 1st respondent herein as plaintiff seeking the relief of partition in respect of his 1/5th share in the suit properties and for costs. The defendants entered appearance and filed their written statement. But, later they remained *ex-parte*. So, an *ex-parte* preliminary decree was passed, on 05/04/2002 and final decree application was filed, on 08/06/2013. Thereafter, the present petition is taken out by the defendants before the trial court in IA No.271 of 2021 to set aside the *ex-parte* decree along with an application under section 5 of the Limitation Act to condone the delay of 6353 days. That came to be dismissed by the trial court.

3. Against which, this civil revision petition has been preferred.

4. Heard both sides.

5. The impugned petition is filed by the petitioner/2nd defendant with the following averments:-

The entire suit property belongs to their father namely Chelliah Nadar. The plaintiff, after receiving



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Rs.20,000/- relinquished his right in the joint family property by executing a document, dated 26/06/1992. He separated from the joint family. Chelliah Nadar died, on 02/05/1996. After the death of Chelliah Nadar, the other legal heirs are enjoying the properties. After filing the suit by the 1st respondent herein, they informed him that his father namely Chelliah Nadar already relinquished his right in the joint family through a registered deed, dated 26/06/1992. so, he is not entitled for any share in the property. On that account, the 1st respondent promised to withdraw the suit. Later, he failed. By suppressing the document, he obtained a preliminary decree. After that, he remained silent for about 16 years. Later only, he filed a petition for final decree.

6.That was resisted by the 1st respondent by filing counter stating that no such promise was made by them to withdraw the suit. The document is also disputed by him. To delay the final decree proceedings only, the petition is filed.

7.During the final decree proceedings, the Commissioner was appointed and the Commissioner also took out the inventory of the properties in the presence of both sides.



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8.After hearing both sides, the trial court recorded a finding that no proper reason is assigned by them, and dismissed the petition.

9.Against which, this civil revision petition is preferred.

10.The learned counsel appearing for the petitioner would submit that suppressing the execution of the release deed, dated 26/06/1992, the decree has been obtained, which according to them, is a fraudulent decree obtained by suppressing the facts. So, he is entitled that the matter to be decided on its own merit.

11.For which, the learned Senior counsel appearing for the 1st respondent/plaintiff would submit that even if the relinquishment deed is taken into account, then the right of the 1st respondent to get the share in the property left by the father, cannot be disputed and denied.

12.For which, the learned Senior counsel is also going through the recitals in the disputed release deed and the plaint averments, etc., facts.



13.It is not proper on the part of this court to record any finding on that issue. But the fact remains that the defendants have known the pendency of the final decree petition also. They also participated in the Commissioner's proceedings.

14.As pointed out by the trial court, even after that knowledge, they have not approached the court within the reasonable time. Absolutely, there is no reason for by the defendants. Only bald statement has been stated that a promise was made by the 1st respondent/plaintiff to withdraw the suit. Only on that account, they remained silent. Such sort of contention cannot be taken into account at all without any basis. Had it been any promise between them, they would have intimated the same to the Court through their advocate. That was not done. Bald allegations should not be taken into account.

15.Another ground that has been taken by the petitioner is that the judgment itself is a cryptic and not a reasoned one.

16.But the learned Senior counsel appearing for the 1st respondent/plaintiff would draw the attention of this court to the presence of the 4th defendant at the time of



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passing the decree. It has been observed by the trial court that the 4th defendant was also present at the time of passing the decree. PW1 was examined namely the plaintiff was examined as PW1. The court recorded that the suit claim is proved. So, according to the learned Senior counsel appearing for the 1st respondent/plaintiff, it is a cryptic judgment, but the judgment was passed in the presence of the 4th defendant and the petitioner the 2nd defendant in that suit only absent. Simply because, a cryptic judgment has been passed, it cannot be said that without considering the merits, the judgment has been passed.

17. Now whatever it may be, chances were available to the petitioner/2nd defendant even to challenge the preliminary decree. But that was not done. Final decree application was filed and that was also brought to his notice or knowledge as the case may be. He remained silent. After 16 years, this petition has been filed stating that there is a reason for his non-appearance, that too without any basis. The subsequent event has also been brought to the notice of this court by the 1st respondent stating that on 11/05/2023, this petitioner/2nd defendant along with others executed a sale deed in respect of their undivided share in the family



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properties. So, by pointing out this document, it has been submitted that the petitioner himself admits that the joint family property still exist. So, according to him, the ground of suppression does not arise at all. But, as mentioned above, I am not going into the merits of the case.

18.With regard to the jurisdiction of the court to entertain the application under section 5 of the Limitation Act, the guidelines have been imposed in the celebrated case namely **Esha Battacharjee's** case. Since it has been oftenly repeated, I need not extract the relevant portion in an extensive manner.

19.Suffice to say that the reason assigned by the petitioner is not sufficient and acceptable also. I find no reason to entertain this petition and interfere in the order passed by the trial court.

20.In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

20/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Sub Court,
Kovilpatti,
Tuticorin District.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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