



C.R.P(MD)No.2635 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 19.11.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

**C.R.P(MD)No.2635 of 2017
and
C.M.P(MD)No.12116 of 2017**

Karuppusamy

... Petitioner / Appellant

Vs

1.Anitha

2.Sellathal

... Respondents / Respondents

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order made in I.A.No.30 of 2014 in A.S.S.R.No.1013 / 30.01.2014 on the file of Principal District Court, Karur, dated 02.11.2016 and allow this Civil Revision Petition.

For Petitioner : Mr. S.Gokulraj

For R1 : Mr.M.P.Senthil

For R2 : No appearance



C.R.P(MD)No.2635 of 2017

WEB COPY

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order made in I.A.No.30 of 2014 in A.S.S.R.No.1013 / 30.01.2014 on the file of Principal District Court, Karur, dated 02.11.2016 and allow this Civil Revision Petition.

2. The facts in brief is that the suit in O.S.No.148 of 2007 was filed by the respondent herein seeking the relief of partition and separate possession in respect of their share, mesne profit and for cost. The defendant entered appearance and filed their statement. The trial Court after full trial, decreed the suit as prayed for by judgment and decree dated 22.02.2011.

3. Against which the revision petitioner intended to file an appeal and there is a delay of 888 days in preferring the appeal. To condone the delay, he filed an application which was dismissed by the appellate Court by order dated 02.11.2016 against which this revision is preferred. The affidavit filed by the revision petitioner, before the appellate Court reads that he applied for a certified copy and which is made available on



C.R.P(MD)No.2635 of 2017

11.08.2011. But his name was omitted to mention in the decree. So he has not filed the appeal in time. He was informed that only after carrying out the correction by amendment, appeal could be preferred. His advocate told that the respondent has filed a memo with a copy of the decree for amendment and thereafter he received notice without any petition. So he contacted his advocate and informed the same. But later it came to know that without giving notice to him, the amendment petition filed by the respondent was allowed. Since the decree was not amended, he was unable to file the appeal in time and a delay of 888 days has occurred.

4. The appellate Court recorded a finding that this is not a sufficient reason to condone the delay. There is no necessity for getting the decree for filing the appeal. Judgment copy is sufficient to file an appeal. Having known the above said situation, the revision petitioner remained ideal without taking any steps. So the reason stated is not acceptable. Apart from that it is also stated that in pursuance of the preliminary decree, the final decree was filed in I.A.No.28 of 2013, the petitioner received the notice and appeared through his advocate on



C.R.P(MD)No.2635 of 2017

06.03.2013. Only after that he received a certified copy of the decree on 28.11.2013. Even thereafter also, there is a delay and the appeal was preferred only on 30.01.2014. So the reasons assigned by the revision petitioner is not acceptable.

5. Learned counsel for the petitioner would submit that because of the mistake on the part of the Court in drafting the decree properly, the delay occurred, for which the petitioner should not be penalized.

6. Per contra, learned counsel for the respondent would submit that only after getting a notice in the final decree application, the revision petitioner applied for copy application and received the decree. Now commission report is filed in the final decree application. At this stage, this petition is filed to drag on the final decree proceedings.

7. Perusal of records and the order of the appellate Court also does indicate that the reason assigned by the revision petitioner is not only the reasonable but also not acceptable. The revision petitioner ought to have prosecuted the appeal in time after coming to know about the decree passed by the trial Court as mentioned by the appellate Court. A copy of



C.R.P(MD)No.2635 of 2017

the judgment is enough for filing the appeal. Eventhough there is a mistake on the part of the trial Court in drafting the decree properly, but as mentioned above only after getting the notice in the final decree proceedings, it appears that the revision petitioner took steps to file the appeal. So this itself indicates that he wants to drag on the matter to protract the final decree proceedings. Now the Commissioner report is also filed. There is no reason to interfere with the order of the appellate Court made in I.A.No.30 of 2014 in A.S.S.R.No.1013 / 30.01.2014 on the file of Principal District Court, Karur, dated 02.11.2016. The revision petitioner may participate in the final decree proceeding and may work out his relief.

8. With the above said observation and liberty, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

19.11.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

pnn

5/6



WEB COPY



C.R.P(MD)No.2635 of 2017

G.ILANGO VAN, J.

pnn

To

- 1.The Principal District Court, Karur.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
C.R.P(MD)No.2635 of 2017
and
C.M.P(MD)No.12116 of 2017

19.11.2024