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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.03.2024

DELIVERED ON : 04.06.2024

CORAM

THE HON'BLE MR. JUSTICE G.ILANGOVAN

C.R.P.(MD).Nos.2884 to 2886 of 2023

and C.M.P.(MD).Nos.15006, 15007 & 15009 of 2023

V.Ramasamy ... Petitioner/Petitioner/Defendant in all petitions

Vs.

(*)1.Linganandi
2.Thirumalaisamy @ Venkatesan
3.Neelavathi
4.Chinnazhagan ...Respondents/Respondents/3rd Party/Nil in all petitions

Common Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.No.338 of 2022, 339 of 2022 & 340 of 2022 in O.S.No.75 of 2012 on the file of the District Munsif cum Judicial Magistrate Court, Natham, dated 25.09.2023.

(*)For Petitioner : Mr.J.Jeyakumaran
For Respondents : Mr.R.Venkatesan for M/s.Right Law Associates for R1 to R4 (In all petitions)

COMMON ORDER

These civil revision petition has been filed to set aside the fair and decreetal order passed in I.A.No.338 of 2022, 339 of 2022 & 340 of 2022 in O.S.No.75 of 2012 on the file of the District Munsif cum Judicial Magistrate Court, Natham, dated 25.09.2023.

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2.The facts in brief:

Suit in O.S.No.75 of 2012 was filed by one Periyakal, Andichi and Alagunachi against this revision petitioner seeking the relief of the partition and separate possession of their 3/4th share and cost. The suit was decreed as prayed for with costs. Since the defendant namely the revision petitioner herein remained exparte, to set aside the exparte order and decree, two applications were taken by the revision petitioner in I.A.Nos.339 of 2022 and 340 of 2022. Both were dismissed. Against which, separate revisions are preferred.

3.In the affidavit filed in support of the petition in I.A.No.339 of 2022, the following averments are made.

4.She is an illiterate, believed the words of her Advocate. He made endorsement as no counter in the final decree application without his instructions. Commissioner was appointed in the final decree application and later only he came to know about all those facts. To set aside the exparte decree, he filed an application to condone the delay of 4563 days. The trial Court after hearing both sides dismissed the petition observing that there is a huge delay in filing the petition to set aside the

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exparte order. The delay is not properly explained. In an elaborate manner mentioning the dates and events, it passed the order. Aggrieved over the same this revision is preferred.

5.In pursuance of the preliminary decree passed in the suit on 23.08.2014, I.A.No.70 of 2019 was filed by the third party namely Lingandi, Thirumalaisamy @ Venkatesan and Neelavathi, seeking final decree on the ground that the original plaintiff by name Alagunachi died on 07.02.2014 without marriage and legal heirs; The first plaintiff namely Periyakal is the Class I legal heir; After that the first plaintiff executed a settlement deed in respect of 2/4th share in favour of second plaintiff; The second plaintiff has 3/4th share and defendant namely the revision petitioner has ¼th share. The second plaintiff also died intestate on 06.04.2018 leaving behind the petitioner as Class I legal heir. In that position only I.A.No.338 of 2022 and 339 of 2022 were filed.

6.I.A.No.339 of 2022 has filed as stated above to set aside the exparte decree under Order 9 Rule 13.

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7.Now in the grounds, the learned counsel for the petitioner would submit that by suppressing the true facts, the suit was filed. The relationship itself is disputed stating that the original plaintiff are neither the mother nor the sisters of the revision petitioner. So when the relationship itself is disputed opportunity must be given to the revision petitioner to contest the main suit itself.

8.But, when the application to set aside the exparte decree along with Section 5 application was dismissed, Civil miscellaneous appeal only will lie.

9.In view of the Judgment passed by the Honourable Supreme Court in the case ***The Koushik Mutually Aided Cooperative Housing Society Vs. Ameena Begum & Another*** in ***Civil Appeal @ Special Leave Petition (C) No.5489 of 2021***, it is made clear that when Order 9 Rule 13 application is dismissed, either along with application Under Section 5 of the Limitation Act or a consequential order, only Civil Miscellaneous Appeal will lie. So liberty is granted to the revision petitioner to file appeal before the appellate Court.

10.Here the problem arises with regard to the limitation for filing the appeal. Since the revision has been preferred in a bonafide manner, the time taken in these proceedings shall be deducted while calculating or computing the period of limitation for filing appeal.

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11.With this liberty and direction these revision petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writes)

(*)Corrected as per order of this Court dated 29/08/2024 made in CRP(MD)Nos.2884 to 2886 of 2023

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2024

Sub Assistant Registrar(CS)

TM

To

(*)To be substituted the order which already despatched on 21/08/2024

1.The District Munsif cum Judicial Magistrate, Natham.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.RIGHT LAW ASSOCIATES, Advocate (SR-24958[F] dated 04/06/2024)

+1 CC to M/s.J.JEYAKUMARAN, Advocate (SR-25113[F] dated 05/06/2024)

C.R.P.(MD).Nos.2884 to 2886 of 2023

04.06.2024

SL(29.07.2024) 5P/ 6C

MGJ(20.09.2024) 5P 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.

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