

IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.

Present: Thiru.D. Ramganesh M.A.,B.L.,
District Munsif.

Date: 29.03.2019

IA. No.191/2015

in

I.A.No. 18/2015

in

O.S.No.174/2009

1. S. Sadaiyandi

2. S. Velan

: Petitioners/1 and 4 Defendants

//Versus//

S. Pitchai

: Respondents/Plaintiff

This petition is filed before this court and it was taken on 28.04.2015 and Advocate Thiru. Rajasaravanan appeared for the Petitioners/4th defendant and Advocate Thiru. N.C.R. Janagan appeared for the Respondent/Plaintiff. This petition came before me for final hearing on 26.03.2019, Upon hearing the arguments advanced on both sides, upon perusing the available material records and having stood over for consideration till this day, today this court delivered the following...

ORDER

The petitioners have filed this petition for U/s order IX, Rule 9 and Section 151 of CPC for the reasons stated in the accompanying affidavit it is restored the I.A No. 18/2015 dismissed on 09.04.2015 and render justice.

2) GIST OF PETITION:

IA No.18/2015 was passed over by this court on 9.4.2015 on defendants side advocates request for enquiry. After passing over the matter the defendant side advocate has gone to Taluk office Vadipatti, with intention to attend some work there before the

matter was taken up by this Hon'ble court.

But this petitioner advocate return to this court, the case was taken up and dismissed the same for default. As the matter was for submissions of advocate, the petitioners advocate had not insisted our presence on that day, the petitioners were not present before this court.

The Petitioners failure to appear before this court on 09.04.2015 is neither will full nor-wanton but only due to afore said circumstances.

The petitioners have valuable right in the I.A.No. of 2014 . If the I.A.No. of 2014 is not restored to great hard ship. The respondent/plaintiff will not be prejudiced in any manner on containing the suit on merits. Therefore it is just and necessary that this court may be pleased to restore the I.A No. 18/2015 dismissed on 09.04.2015. Hence the petition may be allowed.

2. COUNTER OF RESPONDENT/PLAINTIFF

The Respondent/Plaintiff have read over and translated to Tamil in contents of the affidavit filed by the 1 and 4 petitioner/Defendants in support of the Additional Written Statement for dismiss the Partition Suit filed by the Plaintiff/Respondent before this court against the defendants 1 to 6 in respect of joint family properties and that the suit mentioned properties are ancestral properties to the Plaintiffs/Respondents and all other Defendants including the 1st and 4th Petitioners/Defendants in respect of this Partition Suit.

The 1st Petitioner/Defendant is a father of Plaintiff and all other Defendants while they were living as a joint family members upto 2008 they are enjoying the suit mentioned properties till file the petition suit, and the 1st petitioner/1st Defendant executed a settlement deed in the name of his grandson Minor, Ranjithkumar in respect of suit

mentioned properties on 03.10.2008 and another settlement deed executed on 17.10.2008 in two different dates without informed to the Respondent/Plaintiff and without getting consent in respect of joint family properties from the Respondent/Plaintiff and that the suit properties are not self acquired properties of 1st Petitioner/Defendant, while so being the 1st Petitioner/Defendant S. Sadaiyandi due to inducement of 4th Petitioner/Defendant namely Velan executed two settlement deeds in the name of 4th Petitioner/Defendant's son namely Minor Ranjithkumar and Minor Ranjithkumar only son to the 4th Petitioner/Defendant namely velan but the 4th Petitioner/Defendant revealed some false versions in Para wise of Additional Written Statement filed by plaintiff before this court in which the Petitioner/4th Defendant revealed Minor Ranjithkumar not imp led as necessary party in the partition suit. But the said allegations is not sustainable and acceptable by Respondent/Plaintiff as per law, because the Minor Ranjithkumar is not a share holder to the joint family properties while his father namely Velan is living as a share holder of family property. So the Minor Ranjithkumar is not a necessary party as per law to this Partition Suit. The 4th Petitioner/Defendant revealed false version in para No.1 of the Additional Written Statement filed by Respondent/Plaintiff before this court.

And the another allegations mentioned by 4th Petitioner/Defendant in his additional written statement in para 3 of the Additional Written Statement in para 3 of the Additional Written Statement in which revealed that the father of the 1st Defendant died on 3rd day of Avani (Tamil month) in the year 1986. So that the suit properties left by the father of the Defendant are self acquired property to the defendant, though in the settlement deed executed by the 1st defendant it has been as ancestral, as they are only self acquisition, the reference as an ancestral property is only mistake that was due to misguidance of

document writer. Even though the above said allegations revealed by the 4th petitioner/Defendant in para 3 of the Additional Written Statement is not acceptable and sustainable versions in law.

The 4th Petitioner/Defendant revealed the followed allegations in written statement in para 4 of the Additional Written Statement in which stated that the Plaintiff has very much under valued the suit properties, the value of the suit properties as on the date suit itself would be not less than Rs. 7,00,000/- (Rupees Seven Lakhs only) but the Respondent/Plaintiff has valued the suit only at Rs. 1,12,500/- the allegations above are false allegations revealed by 4th Petitioner/Defendant because the Respondent/Plaintiff valued the suit property as per settlement deed on guideline value of Alanganallur sub-Registrar office. On that basis the Respondent/Plaintiff paid court fee under section 37(2) of the Tamilnadu Court fee Act for the partition suit. So this court is having fully right pecuniary jurisdiction as per amendment of the civil procedure code act. Hence this court is having right to deal with the partition suit at Rs.1,00,000/-. So far as this partition suit filed by Respondent/plaintiff to get his share 1/6th share in respect of the joint family properties, for which the Respondent/plaintiff paid correct court fee of Rs. 250/- towards valued at Rs. 1,12,500/- for his 1/6th share only.

The Petitioner/Defendant already filed additional written statement along with affidavit on 18.03.2014 which is numbered in I.A.No.126/2014 and the case was posted for cross examination in so many hearings after filed counter affidavit by the Respondent/Plaintiff. But the Petitioners/Defendants were not appeared for cross examination in those hearings. Thereby this court pronounced order in IA.No.162/2014 in O.S No.174/2009 on 11.09.2014 for cross examination so finally. Eventhough the

Petitioner/Defendants and their Counsel are not appeared before this court for cross examination on that hearing. Hence this court passed order in that case as "Set exparte due to non-appearance of petitioner/Defendants for argument. Finally in I.A.No.126/2014 dated 11.09.2014 and then the above named 4th Petitioner/Defendant filed an application again to set aside the exparte order on 11.09.2014 numbered in I.A.No. 429/2014 on 18.12.2014 for enquiry. So the application is dismissed on 18.12.2014.

And the above named 4th Petitioner/Defendant again filed on another application dated 08.01.2015 to set aside the exparte order in that I.A.No.379/2015 in that petition also the above named petitioner and his counsel also were not appeared for enquiry on 08.01.2015 which is dismissed on 09.04.2015 while so being the above named 4th petitioner/Defendant again filed an another application on 06.10.2015 to set aside the exparte order mentioned on 09.04.2015 that petition is numbered in I.A.No.379/2015 in O.S.no.174/2009. Which set aside petition is dismissed by this court due to non-appearance of hearing by 4th Petitioner/Defendant at the time of hearing dated 09.10.2015.

But the petitioner/defendant again filed and additional Written Statement along with affidavit on 08.01.2015 so freshly inlieu of filing revision petition before this Hon'ble High Court, Madras at Madurai Bench against the order in I.A.No.126/2014 dated 11.09.2014. Hence this Additional written statement along with affidavit is not sustainable and acceptable as per law filed by petitioner/Defendants before this court in I.A.No.18/2015 date 08.01.2015.

The Petitioner/4th Defendant has filed on Revision Petition against the order of in trial court in I.A.No. 379/2015 filed under section 5 of the Limitation Act for condoning the delay of 25 days in representing a petition to restore a petition in I.A.No. 191/2015

that was dismissed by default on that ground the revision Petitioner's reason for the delay was not acceptable and the above named petitioner/4th Defendant has filed on revision petition against the order of trial court to set aside the ex parte order in I.A.No.379/2015 in I.A.No.191/2015, in I.A.No.18/2015 in O.S No.1754/2009 on the file of the District Munsif cum Judicial Magistrate court and those above mentioned 3 Interlocutory applications were dismissed by the trial court at Vadipatti due to unsustainable and unreasonable reasons mentioned by petitioner/4th Defendant.

The Hon'ble Judicature of Madras Madurai Bench in Cr.P.(PD)No.2585 of 2015 against the order in I.A.No.2 379/2015 in I.A.No.1919/2015, I.A.No.18/2015 in O.S No. 174/2009 pronounced order to remand for enquiry to the trial court in respect of above mentioned 3 I.As in O.S No. 174/2009 to remand for enquiry to the trial court. So the above mentioned Respondent/Plaintiff has filed the Counter Affidavit before this court to dismiss the petition. Hence the petition may be dismissed.

3) Now the points for consideration is whether this petition has to be allowed or not?

4) Heard both sides. Perusal records. This petition has been filed on the side of petitioner to restore the I.A.No.18/2015 which was already dismissed for default on 09.04.2015. The above said IA.No.18/2015 has been filed for the purpose of seeking permission to file additional written statement. The main content of the respondent put forth before this court is the petitioner having intention to drag on the suit proceedings and previous so many petitions like IA379/2015. IA 18/2015, IA 429/2014, IA 129/2014, IA 191/2015 have been filed by the petitioner. Hence this petition liable to be dismissed. On perusal of records this IA No. 191/2015 has been restored. As per the order of Hon'ble

Highcourt of Madras at Madurai . Hence in CRP(MD)No.2525/2015 on 02.07.2018.

5) Further, the counter filed by the respondent/plaintiff stated the detail facts in respect of conduct of petitioner regarding the drag on suit proceedings. On perusal of records the Hon'ble Highcourt of Madras at Madurai clearly stated in CRP (MD) NO.2585/15 such as

"It is well settled principles of law that application to condone the delay must be considered liberally and length of delay is not a criteria. The party must be given sufficient reasons for condoning the delay and the intention of the party must be bona fide and they must be given an opportunity to put forth their case on merits and should not be shut out at the threshold itself."

6) Further this petition has been filed only for seeking the relief of restoration of IA 18/2015. Further it is admitted fact that the parties in the suit proceedings are co-parceners and the relief of the suit is partition. It is well settled principle of law that in the partition suit all the rightful parties in the suit proceedings are entitled to get the benefit of partition. Hence if this petition will considered no prejudice would caused to the respondent. Further the suit is pending from 2009. Hence considering the all of the above such facts and circumstances and above such legal position and to avoid further delay in the suit proceedings and in the interest of Justice this petition liable to be allowed. Accordingly the question is answered.

7) Finally this petition is allowed. No cost.

Dictated to the Steno typist typed by her directly on the computer, corrected and pronounced by me in the open court this the 29th day of March 2019.

(Sd. D. Ramganesb)
District Munsif
Vadipatti.

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