

Devendran. Vs. Chinnammal

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Court : Chennai

Decided On : Jul-20-2012

Judge : G.Rajasuria, J.

Acts : Limitation Act - Section 5; [Code of Civil Procedure,\(CPC\) 1908](#) - Order 9 Rule 13

Appeal No. : C.R.P.NPD.Nos.2381 And 2382 of 2011 and M.P.No.1 of 2011

Appellant : Devendran

Respondent : Chinnammal

Advocate for Def. : Mr.M.Palanisamy, Adv

Advocate for Pet/Ap. : Mr.PA.Sudehkumar, Adv

Judgement :

Civil revision petitions filed against the order dated 20.12.2010 passed in I.A.Nos.524 and 525 of 2010 in O.S.No.217 of 2004, by the District Munsif Court, Tirupattur, Vellore District.

ORDER

1. Inveighing the order dated dated 20.12.2010 passed in I.A.Nos.524 and 525 of 2010 in O.S.No.217 of 2004, by the District Munsif Court, Tirupattur, Vellore

District, these civil revision petitions are filed.

2. A thumbnail sketch of the germane facts absolutely necessary for the disposal of these civil revision petitions would run thus:

(i) One Chinnammal and Chennakesavan filed the suit as against the revision petitioners herein-1.Devandiran and 2.Rajendiran seeking partition.

(ii) Chinnammal died pendente lite. It so happened that the suit was decree ex-parte. Subsequently final decree application was filed by Chinnakesavan. At that time, notice was served on the revision petitioners/defendants. Whereupon, they came to know about the suit O.S.No.217 of 2004 and the passing of the ex-parte decree thereon.

(iii) Consequently, two petitions in I.A.Nos.524 & 525 of 2010 were filed one for getting the delay of 1746 days condoned in filing the application under Order 9 Rule 13 of C.P.C. and another application under Order 9 Rule 13 of C.P.C.to get set aside the ex-parte decree passed in the suit.

(vi) Both the applications were numbered by the lower Court and they were dismissed.

3. Being aggrieved by and dissatisfied with the said orders these two civil revision petitions have been focussed by the defendants on various grounds.

4. The learned counsel for the petitioners/defendants would detail and delineate, portray and project the facts to the effect that only on receipt of the notice in the final decree application, the revision petitioners came to know about the filing of the original suit and the passing of the ex-parte decree as against them. Whereupon alone the application under Section 5 of the Limitation Act was filed. In fact, within 210 days from the date of knowledge of such passing of the ex-parte decree, application was filed. Before the lower Court, the revision petitioners/defendants computed the number of days delay from the date of ex-parte decree and accordingly specified the number of days as 1746.

5. The learned counsel for the respondents/plaintiffs would agree to the factual position as submitted by the learned counsel for the revision petitioners/defendants.

6. The learned counsel for the revision petitioners/defendants would submit that the earlier suit for partition was transferred from the Sub-Court to Munsif Court on the point of jurisdiction, however, the learned counsel for the respondents/plaintiffs would submit that earlier the suit summons was served on the defendants.

7. The point for consideration is as to whether the lower Court was not justified in condoning the delay and consequently dismissing the application under Order 9 Rule 13 of C.P.C?

8. The perusal of the records would reveal that the facts are not as narrated by the learned counsel for the revision petitioners/defendants. The learned Judge in the impugned order would refer to the fact that there was no adequate reason for condoning the delay. There is no finding by the lower Court as though the suit summonses itself were not served on the revision petitioners/defendants. Hence, in such a case, this Court cannot presume and assume that the suit summonses were not served on the revision petitioners/defendants. But one fact has to be taken note of. Whenever a case is transferred from one Court to another Court on the point of jurisdiction, the transferee court should issue notice to both sides relating to the future date of hearing.

9. In this case, it is not readily known as to whether such notice was sent. The lower Court also has not given any finding that such notice was sent to the defendants by the transferee Court.

10. Be that as it may, taking into account the fact that this is a suit for partition among near relatives and only ex-parte decree was passed, I am of the view that the delay could be condoned, by way of giving an opportunity to the defendants, in the interest of audi alteram partem, subject to payment of total cost of Rs.5000/- (Rupees five thousand) payable by the revision petitioners herein/defendants in favour of the respondents herein/plaintiffs within 15 days from the date of receipt of a copy of this order. On compliance with such condition, both the interlocutory

applications shall stand allowed and the ex-parte decree shall stand set aside. If there is no payment, this order will not enure to the benefit of the revision petitioners herein/defendants. On such compliance with this order, the lower Court shall see that the O.S. is disposed of within four months thereafter.

11. The civil revision petitions are ordered accordingly. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

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