

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD) No.2598 of 2016

and C.M.P.Nos.13403 and 13404 of 2016

1. Renuka
2. Kalaiselvi

... Petitioners

..VS..

1. Ravichandran
2. Ramesh
3. Kamala
4. Sounder Rajan (Minor)
rep. By his Guardian
Mother Sarala
5. Sarala

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 20.02.2014 passed in I.A.No.479 of 2013 in O.S.No.125 of 2009 on the file of the Principal Subordinate Court, Tindivanam.

For Petitioners : Mr.P.Govindarajan
For respondents : Mr.S.Dawoodkhan (R1, 4, 5)
Mr.G.Suresh (R2&3)

ORDER

Heard Mr.P.Govindarajan, learned counsel appearing for the petitioners, Mr.S.Dawoodkhan, learned counsel appearing for

respondents 1, 4 and 5 and Mr.G.Suresh, learned counsel appearing for respondents 2 and 3.

2. Challenging the fair and final order passed in I.A.No.479 of 2013 in O.S.No.125 of 2009 on the file of the Principal Sub Court, Thindivanam, the plaintiffs have filed the above Civil Revision Petition.

3. The plaintiffs have filed a suit in O.S.No.125 of 2009 for partition and separate possession. Since the plaintiffs failed to appear before the trial Court on 24.06.2013, the trial Court dismissed the suit for non prosecution. Thereafter, the plaintiffs filed an application in I.A.No.479 of 2013 to condone the delay of 105 days in filing the application to restore the suit. In the affidavit filed in support of the application, the first petitioner has stated that she was taking care of her daughter during her pregnancy at JIPMER Hospital, Pondicherry. Therefore, she could not contact her counsel and hence she could not appear before the trial Court on 24.06.2013. Since the 1st petitioner was taking care of her daughter in the hospital, there was a delay of 105 days in filing the application to restore the suit. The application filed by the plaintiffs was contested by the defendants. The trial Court, taking into consideration the case of both parties, dismissed the application, finding

that the plaintiffs have not explained the reasons in a proper manner. Against this order, the plaintiffs have filed the above Civil Revision Petition.

4. When the matter is taken up for hearing, the respective counsels appearing for the respondents submitted that they have no objection for setting aside the order passed by the trial Court in I.A.No.479 of 2013 and allowing the Civil Revision Petition.

5. Since the revision petitioners have satisfactorily explained the reasons for the delay in the affidavit filed in support of the application in I.A.No.479 of 2013, I am of the view that in the interest of justice, the trial Court should have condoned the delay. That apart, it is a suit for partition and therefore, the trial Court should have condoned the delay in the interest of justice.

6. In these circumstances, the fair and decreetal order dated 20.02.2014 passed in I.A.No.479 of 2013 in O.S.No.125 of 2009 are set aside and the Civil Revision Petition is allowed. No costs. Connected miscellaneous petitions are closed.

15.09.2016

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M. DURAISWAMY,J.,
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To
Principal Subordinate Court,
Tindivanam.

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