

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.04.2017**

CORAM:

THE HONOURABLE MR. **JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) No.2157 of 2013

1.Perumal
2.Annamalai

... Petitioners

versus

1.Chinnathayee Ammal(died)
2.Periyathambi
(Recognised as L.R. of R1)
Amended as per the order in
I.A.No.49 of 2009, dated 08.09.2009

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C.,
against the order dated 01.10.2010 passed in I.A.No.57 of 2005 in
A.S.SR.No.Nil of 2005 by the learned District Judge,
Tiruvannamalai.

For Petitioners	: Mr.A.M.Loganathan
R1	: Died
For R2	: Mr.G.Rajan
	Mr.R.Rajarajan

ORDER

The petitioners filed first appeal before the District Court,
Tiruvannamalai along with an application in I.A.No.57 of 2005 to

condone the delay of 702 days. The application was dismissed by the learned Trial Judge, primarily, on the ground that delay was not explained properly by the petitioners. The order is under challenge in this civil revision petition.

2. Heard the learned counsel for the petitioners and the learned counsel for the second respondent.

3. The respondents filed a suit for declaration and consequential injunction before the District Munsif of Tiruvannamalai in O.S.No.226 of 1989. The suit was decreed by the Trial Court.

4. The petitioners failed to file first appeal within a period permitted by law.

5. The petitioners, in the affidavit filed in support of the application in I.A.No.57 of 2005, contended that on account of severe drought in the village, they migrated to Shimoga for their livelihood. According to the petitioners, they struggled hard to earn something for their maintenance. In short, the petitioners contended that they have migrated to Shimoga eking for their livelihood and resided there. The

petitioners have come over to Tiruvannamalai for the purpose of filing appeal subsequently.

6. The learned District Judge appears to have taken a too strict views of the matter. The learned District Judge wanted the petitioners to explain each days delay in preferring the appeal.

7. After hearing the learned counsel for the petitioners and on perusal of the pleadings available on record, I am of the view that the Appellate Court was not correct in dismissing the application. The petitioners have explained the reasons with sufficient materials for the purpose of condoning the delay. The Appellate Court was therefore not correct in negating the request made by the petitioners to condone the delay. The impugned order is therefore liable to be set aside.

8. In the result, the impugned order dated 1 October 2010 is set aside. The application in I.A.No.57 of 2005 is allowed.

9. The learned District Judge, Tiruvannamalai, is directed to number the appeal and dispose of the same as expeditiously as possible, and in any case, within a period of four months from the

date of receipt of a copy of this order.

K.K.SASIDHARAN,J.

Kj

10. The Civil Revision Petition is allowed as indicated above.

17.04.2017

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Index:Yes/No

To

The District Judge, Tiruvannamalai.

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