

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.4.2017

CORAM

**THE HON'BLE DR.JUSTICE P.DEVADASS**

**C.R.P.(NPD) No.2332 of 2013**

M.C.Chinnappan

.. Petitioner/Appellant

Vs.

1 Thimmiammal

2 Alagu Chetty

.. Respondents/Respondents

This Civil revision is filed under Article 227 of Constitution of India against the order, dated 23.8.2012, made in I.A.No.1 of 2012 in unnumbered CMA, on the file of the Principal District Judge, Krishnagiri.

For Petitioner : Mr.V.Rameshvel

For Respondents : Mr.V.Nicholas

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**ORDER**

The revision petitioner is plaintiff/appellant/petitioner in I.A.No.1 of 2012 in the unnumbered CMA on the file of the learned Principal District Judge, Krishnagiri.

2 This revision arose out of dismissal of I.A.No.1 of 2012

in unnumbered CMA, which has been filed by the revision petitioner/ plaintiff for condoning the delay of 8 days in filing the appeal.

3 The said I.A. was dismissed for the reason that there was no medical proof to show that the petitioner was not well during the said 8 days.

4 Plaintiff claims himself as the adopted son of the 1st defendant and her husband Vv.Sa.Venkatappa Chetty. After the death of Venkatappa Chetty, plaintiff and the 1st defendant have been in continuous possession and enjoyment of his properties. As the first defendant tried to sell the suit property to the 2nd defendant without the knowledge of the plaintiff, he filed the suit for partition of the properties left by late Venkatappa chetty as against the defendants.

5 The first defendant filed written statement denying the adoption. On the date of trial, as the plaintiff had failed to attend the Court, the suit was dismissed for his default. To set aside the said order of dismissal, plaintiff filed I.A.No.241 of 2011 stating that since

he was sick on that day, he had failed to attend the Court. This was strongly opposed to by the first defendant.

6 The trial Court allowed the petition on condition that the plaintiff shall pay a cost of Rs.300/- on or before 27.7.2011 and posted the petition to 28.7.2011 for reporting compliance. However, since the cost was not paid, the trial Court dismissed the I.A.

7 In the circumstances, plaintiff filed C.M.A. Since there was delay of 8 days in filing C.M.A., he has filed I.A.No.1 of 2012 to condone the said delay giving the reason that he was laid up due to viral fever.

8 The learned Appellate Judge/Principal District Judge, Krishnagiri went deep into the matter and dismissed the I.A. for want of medical proof. In my considered view, the learned Principal District Judge viewed the matter not in proper perspective.

9 There are rival claims with regard to properties which needs to be decided on merits. The very legal status of the plaintiff itself is in issue. He claims that he is the adopted son of Venkatappa

chetty. But it has been denied to by Venkatappa Chetty's wife/1st defendant. If a contrary decision is taken, he will become fatherless. He must look towards his natural father, who is none other than the brother of the deceased Venkatappa chetty. There is possibility that his natural father may disown him. In that event, plaintiff has to search for a father. If the alleged adoption is not proved, the position of 1st defendant will become stronger and her right to her husband's property will also be stronger, so also the position of the 2nd defendant. These are very important issues. An opportunity could have been given.

10 8 days of delay is not so serious. The reason stated for the delay that viral fever, sick, etc. are not uncommon in delay condonation petitions. We simply ignore these reasons and look at the substance of the matter. Further, it is a matter of granting extension of time to pay the cost.

11 In view of the foregoings, ordered as under:

(i) This revision succeeds;

(ii) The impugned order passed by the learned Principal District Judge, Krishnagiri in I.A.No.1 of 2012 in unnumbered CMA is set aside.

(iii) Plaintiff will pay the cost of Rs.300/- to the 1st defendant within 10 days from today.

(iv) If the 1st defendant refuses to receive the said cost, the same shall be deposited as donation to the District Legal Services Authority, Krishnagiri.

(v) On production of proof for the payment of cost or receipt issued by the District Legal Services Authority, Krishnagiri, as the case may be, the trial Court, namely, the Sub Court, Krishnagiri shall set aside the ex-parte decree passed in O.S.No.43 of 2010 and try the suit expeditiously and dispose it of at an early date.

(vi) However, no order as to costs in this revision.

**12.4.2017**

Speaking/Non Speaking order

Index : Yes / No

Internet : Yes / No

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To

1 The Principal District Judge, Krishnagiri

2 The Subordinate Judge, Krishnagiri

**DR.P.DEVADASS, J.,**

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