

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. 2544 of 2013 and
MP.No.1 of 2013

Periyasamey

...Petitioner

Vs

1. Chinnasamy
2. Rajeswari
3. Minor Rajathi rep.
by mother and guardian Rajeswari

...Respondents

Prayer:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, as against the fair and decreetal order of the learned Second Additional Subordinate Judge, Salem dated 07.08.2012 in I.A.No.34 of 2012 in O.S.No.302 of 2004.

For Petitioner : Mr.T.M.Hariharan
For Respondent : Mr.R.Nalliyappan
for R1

ORDER

This civil revision petition is directed against the order dated 7 August, 2012 in I.A.No. 34 of 2012 in O.S.No.302 of 2004, dismissing the interlocutory application filed by the petitioner to condone the delay of 710 days in filing the application for extension of time.

2. Heard the learned counsel for the petitioner and the learned counsel

for the respondents.

3. The factual matrix indicates that the suit filed by the petitioner for partition was dismissed for default. The application filed by him to restore the suit was allowed, subject to payment of a sum of Rs.200/- being costs. The petitioner failed to pay the cost. The interlocutory application was therefore, dismissed. The petitioner, thereafter filed an application in I.A.No.34 of 2012 to condone the delay of 710 days in filing the application for extension of time for payment of costs. Since proper reasons were not given, the application was dismissed by the learned Trial Judge.

4. The suit in question is one for partition. The respondents have taken up a plea that the property has already been settled by the mother in favour of her daughter. The petitioner is the son. In view of the background facts and taking into account the relationship between the parties and the nature of relief claimed in the suit, I am of the view that one more opportunity should be given to the petitioner to prosecute the suit.

5. In the result, the order dated 7 August 2012 is set aside, subject to payment of a sum of Rs.3,000/- as costs. The petitioner is directed to deposit the cost amount before the Trial Court on the credit of O.S.No.302 of 2004 on or before 6 June 2017.

6. In view of the order restoring the application in I.A.No.34 of 2012, I invoke the jurisdiction under Article 227 of the Constitution of India to restore the suit in O.S.No.302 of 2004.

7. The learned II Additional Subordinate Judge, Salem, is directed to post the suit in O.S.No.302 of 2004 for hearing on 8 June 2017. Since the respondents have already filed written statement, the learned Trial Judge is directed to take up the suit and dispose of the same on merits and as per law. Such exercise shall be completed on or before 22 September 2017.

8. The civil revision petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

17.04.2017

Note : Issue the order by 25 April 2017

Asi/Svki

To

The II Additional Subordinate Judge, Salem

K.K.SASIDHARAN,J.

Asi/Svki

C.R.P.(N.P.D.) No. 2544 of
2013

17.04.2017

<http://www.judis.nic.in>