

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.03.2017**

CORAM:

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

C.R.P.(P.D.) No.290 of 2013

1.N.Sundaram
2.S.Velusamy
3.S.Vellandai
4.Palaniammal @ Subbathal
5.Saraswathi
6.A.K.S.Saravanan : Petitioners

versus

Chinna Angammal : Respondent

PRAYER: Revision filed against the order dated 1.8.2012, in I.A.No.22 of 2011 in O.S.No.452 of 2008 on the file of the II Additional Sub Judge, Coimbatore.

For petitioners :: Mr.S.Sithirai Anandam

For respondent :: Mr.Karthikei Balan

ORDER

This civil revision petition is directed against the order dated 1 August 2012 on the file of the II Additional Subordinate Judge, Coimbatore, dismissing the application filed by the petitioners to condone the delay of 435 days in filing the petition to set aside the exparte decree.

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

3. The respondent filed a suit for partition in O.S.No.452 of 2008 before the Additional Subordinate Judge, Coimbatore. The relief in the suit was for partitioning the suit property into two equal shares and to allot one such share to her with separate possession.

4. Before the Trial Court, the petitioners failed to appear in spite of receiving summons. The Trial Court therefore recorded the evidence of the respondent and having found that she is entitled to a decree for partition, decreed the suit.

5. The petitioners after filing the execution petition by the respondent, filed an application to set aside the exparte decree along with an application in I.A.No.22 of 2010 to condone the delay of 435 days.

6. The petitioners in the affidavit filed in support of the interlocutory application, contended that they were not aware of the initiation of the civil suit.

7. The learned Trial Judge dismissed the application taking into account the final decree petition and notice issued by the Advocate Commissioner.

8. The documents available on record indicates that the petitioners were in the know of things with regard to the initiation of suit in O.S.No.452 of 2008. The petitioners have received notice issued by the Advocate Commissioner proposing to inspect the property for division by metes and bounds in accordance with the preliminary decree. The petitioners have not given any valid explanation for the delay. The Trial Court was therefore perfectly correct in dismissing the interlocutory application. I do not find any error or illegality in the said order, warranting interference exercising the revisional jurisdiction under Article 227 of the Constitution of India.

9. In the result, the civil revision petition is dismissed. No costs. Consequently, M.P.No.1 of 2013 is also dismissed.

28.03.2017

Index:Yes/no
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To
The II Additional Sub Judge, Coimbatore.

K.K.SASIDHARAN, J.

(tar)

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