



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2018

CORAM

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THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P.NPD[MD]No.748 of 2018

1.Radha Krishnammal

2.S.Sulokshana

: Petitioners/Petitioners/Plaintiffs

Vs.

1.A.Vasudevan

2.A.Veerachamy

3.G.Mariammal

4.G.Mohanraj

5.G.Chandrasekaran

6.G.Muneeswaran

7.G.Saravanakumar

8.N.Muneeswari

9.G.Maheswari

10.V.Chandra

: Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to allow the Civil Revision Petition and set aside the fair and decreetal order in I.A.No.108 of 2013 in O.S.No.185 of 2003 dated 28.09.2016 on the file of Subordinate Court, Srivilliputhur.

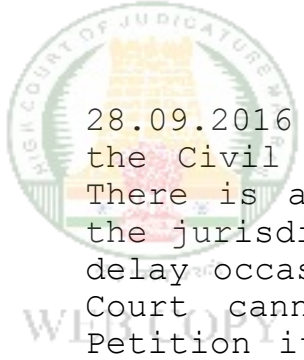
For Petitioner : Mr.M.V.Venkataseshan

For Respondents 3 to 7&9 : Mr.A.Sivaji

For Respondents 1,2,8&10 : No appearance

O R D E R

The revision petitioners are the plaintiffs in O.S.No.185 of 2003 on the file of the Subordinate Court, Srivilliputtur. It is a suit for partition. The suit came to be dismissed for default on 21.07.2010. To restore the same, the revision petitioners filed an Interlocutory Application under Order IX Rule 9 of the Code of Civil Procedure. But, there was a huge delay of 878 days in filing the said application. To condone the delay, I.A.No.108 of 2013 was filed. The Court below by order dated 28.09.2016, dismissed the said Interlocutory Application. Questioning the correctness of the said order, this Civil Revision Petition has been filed.



28.09.2016 and the certified copies had been obtained on 11.11.2016, the Civil Revision Petition came to be filed only on 05.12.2017. There is absolutely no explanation for such belated invocation of the jurisdiction of this Court. Of course, this Court condoned the delay occasioned in filing this Civil Revision Petition. But, this Court cannot lose sight of the fact that this Civil Revision Petition itself was filed after a gap of one year and few months. The suit is of the year 2003. As rightly pointed out by the learned Counsel appearing for the respondents, in the year 2009, another suit came to be laid involving some of the suit properties in O.S.No.181 of 2009 and in that suit, the revision petitioners herein had entered appearance. The contesting respondents herein had entered appearance in the said suit by impleading themselves. But, O.S.No.185 of 2003 was dismissed for default. Therefore, the revision petitioners ought to have taken steps to restore the same in time. The Court below in paragraphs 10 and 11 of the impugned order has observed as follows:

"10) On the side of the respondents Ex.R.1 & 2 have been marked. They are the petition and order in some other proceedings between the same parties before this Court. From the perusal of the same in another suit in O.S.No.181/2009 the present petitioners have appeared through advocate even in the year 2010. I.A.No.30/2011 and they have contested said application. The said application has been disposed in the year 2016 it is established through Ex.R.2. From the perusal of the same in the year 2010 and 2011 the present petitioners in another proceeding have appeared through advocate and they have contested the said proceeding. Hence, the reasons stated by the petitioners that they were prevented to file an application immediately due to illness can not be accepted.

11) It is settled position of law that number of days is immaterial, but reasons stated must be a sufficient one. As already pointed out even in the petition no specific nature of ailment is given, no particulars in respect of the treatment taken has been mentioned nor the date of recovery is stated in the application. The petitioners have not deposed about the alleged sufficient reason. On the other hand, from the perusal of Ex.R.1 & 2 it is clear that in the year 2010, 2011 they have contested another application between the same parties in the same court. Taking in to consideration the above said aspects, this court comes to the conclusion that the present application is devoid of merits, since the petitioners have not established any sufficient reason to condone the delay."



3.The reason given by the Court below is sound and acceptable. Therefore, this Court finds no merit in this Civil Revision Petition. The Civil Revision Petition is dismissed, accordingly. No costs.

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Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Subordinate Judge,
Srivilliputhur.

+ 1 CC TO Mr.M.V.VENKATASESHAN, ADVOCATE IN SR No. 81330
+ 1 CC TO Mr.A.SIVAJI, ADVOCATE IN SR No. 81542

MR
TE/SKN/SAR-3 : 19/09/2018 : 3P/4C

ORDER MADE IN
C.R.P.NPD[MD]No.748 of 2018
30.08.2018