



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN

C.R.P(MD).No.995 of 2018 and
CMP(MD).No. 4338 of 2018

Rengan(died)

1.Azhagu @ Chandrasekar

2.Sivasakthivel

3.Minor. Iyyappan

4.Selvaraj

5.Minor Balasubramanian

6.Minor Alagarsamy

(Minors rep. through their guardian Selvaraj) ... Petitioner

Vs.

1.Meenakshi

2.Kalyani @ Meenakshi

3.Rajeshwari

... Respondents

Prayer: This Civil Revision Petition is filed under Section 115 CPC to call for the records in pertaining to the order dated 15.03.2018 in I.A.No. 1001 of 2017 in O.S.No.374 of 2011 on the file of the Additional District Munsif Court, Manapparai and set aside the same.

For Petitioners

... Mr.T. Vadivelan

For respondents

... No appearance

ORDER

The petitioners have filed the present Civil Revision Petition to call for the records pertaining to the order dated, 15.03.2018 passed in I.A.No. 1001 of 2017 in O.S.No.374 of 2011, on the file of the Additional District Munsif Court, Manapparai and to set aside the same.

2. The revision petitioners, who are the third parties in the suit in O.S.No.374 of 2011 have filed Interlocutory Applications in I.A.Nos. 1001 and 1002 of 2017, for condoning the delay of 1079 days in filing the application to set aside the ex parte decree and for setting aside the ex parte decree passed in O.S.No. 374 of 2011, on the file of the learned Additional District Munsif, Manapparai.



3. It is the case of the petitioners that they are the legal heirs of Late. Rengan through his second wife Chinnapillai. The first wife's daughters have filed a suit against said Rengan, who is the father of the revision petitioners herein for partition. But, at the time of filing suit, the petitioners, who are the sons of the first defendant viz., Rengan and his second wife, have not been impleaded as parties in the suit. During the pendency of suit, the petitioners' father viz., Rengan died on 03.03.2015, and he was set ex parte. After receiving notice in the final decree proceedings in I.A.No.611 of 2016 in the suit filed by the plaintiffs, only they came to know about the suit against the said Rengan. Therefore, the legal heirs of the said Rengan filed two Interlocutory Applications in I.A.Nos. 1001 and 1002 of 2017, for condoning the delay of 1079 days in filing an application to set aside the ex parte decree and also for setting aside the ex parte decree passed in O.S.No. 374 of 2011.

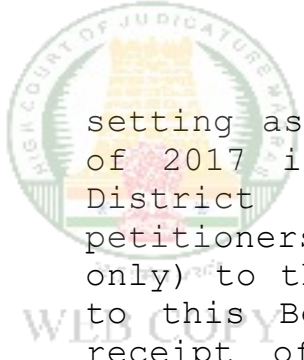
4. I have heard the learned counsel appearing for the petitioners. Even though the names of the respondents are printed in the cause list, there was no representation on behalf of the respondents.

5. Admittedly, the suit was filed by the plaintiffs for partition, the petitioners herein, who are the sons of the second wife of first defendant viz., Rengan, must be impleaded as legal heirs of the second wife of the first defendant, but, they have not impleaded them as party -defendants. On receiving notice in the final decree proceedings only, they came to know about the suit and thereafter, they have filed an application for condoning the delay in filing an application to set aside the ex parte decree and to set aside the ex parte decree passed in I.A.Nos.1001 and 1002 of 2017 respectively and the same were dismissed by the learned Additional District Munsif, Manaparai, on 15.03.2018. Challenging the same, the revision petitioners have filed the present Civil Revision Petition.

6. Though the delay of 1079 days was a huge delay, the nature of the case has proved that the petitioners are sons of second wife of the first defendant / Rengan, naturally, they must be impleaded as a party defendants in the suit. But, the plaintiffs failed to implead them as party, and hence, the delay of 1079 days has been occurred. Since the petitioners came to know about the filing of suit only in the final decree proceedings, the petitioners have to make out their case, but, the delay cannot be condoned without imposing some cost. Therefore, in the interest of justice, I am inclined to allow this Civil Revision

<https://hccastecourtsonline.gov.in/tel-services> the following conditions:

7. Accordingly, this Civil Revision Petition is allowed by



setting aside the order dated, 15.03.2018 passed in I.A.No. 1001 of 2017 in O.S.No.374 of 2011, on the file of the Additional District Munsif Court, Manapparai on condition that the petitioners shall pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the Tamil Nadu Mediation and Conciliation Centre attached to this Bench, within a period of two weeks from the date of receipt of a copy of this order. On production of payment receipt, the learned Additional District Munsif, Manapparai is directed to proceed with the case on merits and in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar

To

1.The Additional District Munsif Court, Manapparai.

2.The Co-ordinator,
Tamil Nadu Mediation and Conciliation Centre,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.T.Vadivelan , Advocate in SR No. 68313

trp
AE/SV/SAR3/17.07.2018/3P/4C

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