



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.2563 of 2017
and C.M.P. (MD) No.11911 of 2017

1. Alagammal
2. Kottarsamy ...
Petitioners/Petitioners/Defendants 1 & 2

-vs-

1. Nagarajan ... 1st Respondent/1st Respondent/Plaintiff
2. Subbulakshmi
3. Muppudath .. Respondents 2&3/Respondents 2&3/Defendants 3&4

Prayer: Civil Revision Petition filed under Sec 115 C.P.C praying to set aside the Fair and Decreetal order dated 10.02.2017 passed in I.A.No.174 of 2015 in O.S.No.98 of 2010 on the file of the District Munsif-cum-Judicial Magistrate, Sengottai, Tirunelveli District and allow the present Civil Revision Petition.

For Petitioners : Mr.R.J.Karthick

For Respondents : No Appearance

O R D E R

The suit in O.S.No.98 of 2010 was filed by the plaintiff seeking for the relief of partition among various other relief and the said suit was allowed and the revision petitioners herein / defendants 1 & 2 decided to file an application to set aside the exparte order, but there was a delay of 548 days in filing such petition. Therefore, they filed I.A.No.174 of 2015 seeking to condone the delay, which was dismissed by the Trial Court on the ground that proper reasons were not assigned to condone the delay. Challenging the said order, the petitioner is before this Court.

2. It is the case of the revision petitioners that the plaintiff sought for partition of the property and the suit was posted for examination of witnesses. Since no summon has been received by them, the Trial Court, without even giving an opportunity of cross examining P.W.1, had passed an exparte order against them. It is the further case of the revision petitioners that the 1st petitioner is the mother of the 2nd petitioner and she had also fallen into sick and the 1st petitioner has been working in Bangalore and there was no communication between them and the counsel and therefore, the set aside application was not able to be filed before expiry of time, which is neither wanton nor wilful.



3. The revision petitioners state that if this petition is not allowed, much prejudice would be caused to the petitioners and moreover, the Trial Court erred in rendering the judgment purely on the basis of one side documents. Contending that the petitioners ought to be given an opportunity to defend their case, it is prayed that the order of the Trial Court is liable to be set aside.

4. Heard the learned counsel for the petitioners and there is no representation on behalf of the respondents. This Court also perused the material documents available on record.

5. It is stated by the petitioners that they had filed an affidavit before the Trial Court, explaining the reasons for the delay and the Trial Court has not taken into account the said affidavit and dismissed the petition in a biased manner. It is the claim of the petitioners that due to inevitable circumstances, they did not prosecute the suit properly before the Trial Court, on account of which, the suit met with its bad fate.

6. It is appropriate to state here that as repeatedly held by this Court, in the matter of condonation of delay, a lenient view should be taken to condone the delay. This Court, on earlier occasion in the case of G.Krishnamoorthy vs., Arulmighu Sri Pataleeswarar Devasthanam, rep. by its Executive Officer, Cuddalore, reported in 2010 (1) MWN Civil 837, has clearly held that the petition for condonation of delay can be allowed, if it is proved that the party could not be able to contact the lawyer in respect of his/her case.

7. In the present case on hand, it has been repeatedly reiterated by the petitioners that pursuant to the ill-health of the 1st petitioner and the prevailing family circumstances, there was no communication between them and their Advocate and therefore, the delay of 548 days has occurred in filing petition to set aside the order, which is an acceptable ground to consider the case of the petitioners. Accordingly, upon hearing the submissions of both sides and finding merits in contention raised by the petitioners, this Court is of the view that the order dated 10.02.2017 passed in I.A.No.174 of 2015 by the learned District Munsif-cum-Judicial Magistrate, Sengottai, Tirunelveli District, is liable to be set aside, but with costs.

8. In the result,

(a) this Civil Revision Petition is allowed and the order dated 10.02.2017 passed in I.A.No.174 of 2015 by the learned District Munsif-cum-Judicial Magistrate, Sengottai, Tirunelveli District, is hereby set aside, on condition that the petitioners shall jointly or severally pay a cost of Rs.20,000/- (Rupees Twenty Thousand only) to the plaintiff within a period of two weeks from the date of receipt of a copy of this order .



No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

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/True Copy/

Sub Assistant Registrar(CS-IV)

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To:

1. The District Munsif-cum-Judicial Magistrate,
Sengottai,
Tirunelveli District.
2. The Record Keeper, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.J.Karthick, Advocate in SR No.73766

C.R.P. (NPD) (MD) No.2563 of 2017

NM/SV/SAR 4/27.09.2018/3P/5C