



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) .No.293 of 2016 (NPD)

1. Rahimuniza
2. Rahamath

... Petitioners/Petitioners/  
Plaintiffs

Vs.

1. Ismail
2. Mohamed Uzen

Fathimabibi (Died)

3. Dhakiruniza
4. Shagir Uzen
5. Batsha

Ameenabi (Died)

6. Ashiabi
7. Mohamed Ismail
8. Mamajikani
9. Balkish Bibi
10. Meharaj
11. Shaboo
12. Jafar
13. Jamal
14. Farook
15. Hamurudh Bibi

... Respondents/Respondents/  
Defendants

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decretal order dated 04.11.2015 passed in I.A.No.376 of 2015 in O.S.No.1257 of 2004 on the file of the Principal District Munsif Court, Thiruchirappalli and allow the present Civil Revision petition.

For Petitioners : M/s.J.Anandhavalli

For R-1, R-2 &amp;

R-8 to R-11

: Mr.Raguvaran Gopalan,  
for Mr.K.Prabhakar

For R-3 to R-7

R-12 to R-15

: Ex-parte



## O R D E R

The Revision petitioners filed O.S.No.1257 of 2004 on the file of the Sub Court, Thiruchirappalli, seeking the relief of partition, separate possession and for mesne profits.

2. The said suit came to be dismissed for default on 08.10.2009. To restore the same, an application was filed. But there was a delay of 154 days in filing the said restoration application. Therefore, to condone the delay, I.A.No.316 of 2011 was filed. It appears that during the pendency of the said proceedings, the third respondent in the said application passed away. Since the Revision petitioners did not take steps for bringing the legal heirs of the said third respondent on record, the said application also came to be dismissed for default as a whole. Therefore, the Revision petitioners filed another restoration application. Such an application came to be filed in the year 2015. Again there was delay of 866 days. To condone the delay of 866 days in filing the restoration application, the present I.A.No.376 of 2015 came to be filed. The Court below dismissed the said application by order dated 04.11.2015. Questioning the correctness of the said order, the Civil Revision petition came to be filed.

3. The learned counsel appearing for the Revision petitioners submitted that substantial justice must be rendered to the plaintiffs who are the Revision petitioners herein and that the lapse on their part can be set right by awarding costs in favour of the respondents herein. The learned counsel strongly contended that the right of the petitioners to get a share in the family property cannot be disputed. The learned counsel for the Revision petitioners submitted that the suit may be restored and taken to its logical conclusion on merits.

4. I am unable to agree with the submissions made by the learned counsel for the Revision petitioners. As rightly pointed by the learned counsel for the respondents, the delay in this case is simply inordinate. This Court went through the affidavit filed in support of I.A.No.376 of 2015. This Court agrees with the findings given by the Court below that the Revision petitioners have not satisfactorily explained the reasons that led to the inordinate delay of 866 days. It is not as if that this is the first application for restoration. Already there was a restoration application and there was a delay in filing the same. The said application was dismissed for default and to restore the same, a subsequent application was taken out. While taking out the subsequent application, there was a delay of 866 days. The suit is of the year 2004. Therefore, the learned Judge was right in observing that in conducting the suit that is of the year 2004, the plaintiffs ought to have been more vigilant. The order passed by the Court below is in exercise of its jurisdiction. It cannot be said to have been illegally or improperly exercised. This Court finds no merit in this Civil Revision petition.



5. The Civil Revision petition stands dismissed, accordingly.  
No costs.

Sd/  
Assistant Registrar (RTI)

/True copy/

WEB COPY

Sub Assistant Registrar (CS-III)

To

1. The Principal District Munsif,  
Thiruchirappalli.
2. The Record Keeper, V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 COPIES)

+1cc to Mr.K.PRABHAKAR, Advocate, SR.No. 78991  
+1cc to Mr.J.ANANDHAVALLI, Advocate, SR.No. 79034

C.R.P. (MD) .No.293 of 2016  
16.08.2018

PMU  
KK/RP/SAR-3/07.09.2018/3P-6C