



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (PD) No.1942 of 2018

1.M.Venkateswaran
2.M.Karthigai Selvan ...Petitioners / Petitioners / Plaintiffs

/Vs./

M.Raman Servai (deceased)
1.R.Chinnammal
2.Karupayee Devi
3.R.Ramchandran
4.Muthu
5.Rajathi
6.Rohini
7.Murugan ...Respondents / Petitioners / Defendants

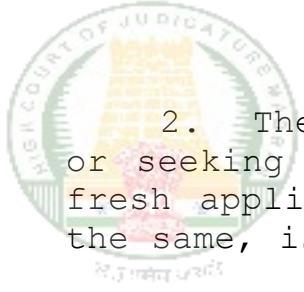
Prayer: Civil Revision Petition - filed under Section 115 of the Civil Procedure Code, to allow this revision petition, set aside the fair and decreetal order dated 13.07.2018 passed in I.A.No.71 of 2016 in O.S.No.88 of 2007 on the file of the Principal District Munsif Court, Aruppukottai.

For Petitioners : Mr.V.Muniasamy

ORDER

The revision petitioners are plaintiffs in O.S.No.88 of 2007 on the file of the Principal District Munsif Court, Aruppukottai. The suit was dismissed for default on 16.11.2012. To restore the same, the revision petitioners filed an Interlocutory Application. There was a delay in filing the same. Therefore, I.A.No.134 of 2013 was filed for condoning the same. The said I.A.No.134 of 2013 was allowed subject to the payment of cost of Rs.500/-. The cost amount was not paid. Therefore, I.A.No.134 of 2013 suffered a dismissal. Thereafter, the present I.A.No.71 of 2016 came to be filed. The prayer in I.A.No.71 of 2016 reads as under:

"It is therefore prayed that this Hon'ble Court may be pleased to condone the delay of 671 days in filing the said restoration petition for set aside the order of exparte passed on 16.11.2012 in O.S.No.88 of 2007 for restore the suit."



2. The Court below held that instead of moving the High Court or seeking extension of time before the very same Court, filing a fresh application for restoration along with a petition to condone the same, is simply not maintainable.

3. The reasons given by the Court below are absolutely sound and acceptable. There is no merit in this civil revision petition. Accordingly, the civil revision petition stands dismissed.

4. It is seen that O.S.No.88 of 2007 is a suit for partition. Even it is dismissed for default, the plaintiffs will not be precluded from instituting another suit on the same cause of action. Therefore, in a case of this nature, the Court below can show some indulgence.

5. The revision petitioners have pointed out in the affidavit filed in support of the Interlocutory Application that the second plaintiff was having certain psychiatric issues and that is why, they could not take steps in time. Therefore, the revision petitioners are given liberty to file an extension of time application, as indicated by the Court below in the impugned order before the Court below.

6. With these observations, this civil revision petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS I)

/True Copy/

Sub Assistant Registrar(CS I)

To

The Principal District Munsif, Aruppukottai.

1CC TO MR. V. MUNIASAMY, ADVOCATE SR 82886

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Order made in
C.R.P. (MD) (PD) No.1942 of 2018
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