

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.6265 OF 2018

ORDER:

The civil revision petition is filed under Article 227 of the Constitution of India questioning the order dated 27.7.2018, passed by the Senior Civil Judge, Gurazala in I.A.No.1072 of 2015 in O.S.No.84 of 2011, wherein and whereunder, the application filed by the petitioners-defendants under Section 5 of the Limitation Act, seeking to set aside the *ex parte* decree passed by the Court below in O.S.No.84 of 2011, was dismissed.

It is the case of the petitioners that the suit was filed by the respondents/plaintiffs for partition of the suit schedule properties into 8 equal shares and allot one such share to the plaintiff with separate possession without any obstructions from the defendants 1 to 11 and for future means profits. After filing of the suit, notices were ordered to all the defendants and when the defendants failed to appear and contest the suit, they were set *ex parte* and ultimately a preliminary decree was passed by the Court below on 31.12.2014 in the main suit itself. It is further stated that as the 5th defendant could not file the petition to set aside the *ex parte* decree within the time prescribed, he filed a delay condonation petition under Section 5 of the Limitation Act seeking to condone the delay of 42 days in filing the petition and to set aside the *ex parte* decree passed against him. The 5th defendant contends that the main suit was looked after by his brother who was shown as D-4 and in view of his death, he has no knowledge about passing of preliminary decree by the Court below on 31.12.2014 and immediately on coming to of the same, he approached the Court below with a delay of 42 days seeking to allow the petition, but the Court below after considering the material

available on record, dismissed the impugned application on the ground the 5th defendant failed to take steps to file written statement in the main suit. Questioning the same, the present revision petition is filed.

The learned counsel for the petitioners contended that since the delay is only 42 days in filing the application to set aside the *exparte* decree and there is no *malafide* intention on the part of the 5th defendant and hence prays to allow the revision petition.

Having regard to the facts and circumstances of the case and since the delay is only 42 days in filing the application to set aside the *exparte* decree, and the suit being a partition suit, this Court is of the view that the delay of 42 days in filing the application, can be considered.

Accordingly, the civil revision petition is allowed setting aside the order dated 27.7.2018, passed by the Senior Civil Judge, Gurazala in I.A.No.1072 of 2015 in O.S.No.84 of 2011. However, since the suit is of the year 2011, the Court below is directed to proceed with the trial and dispose of the same, in accordance with law as early as possible, preferably within a period of six months from the date of receipt of copy of this order. No order as to costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

C. PRAVEEN KUMAR,J

Date:09.11.2018.
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