

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.4935 of 2014

and

M.P.No.1 2014

1.Inban

2.Thamodaran

3.Geja

... Petitioners

Vs.

1.Valli

2.Chinnaponnu

... Respondents

PRAYER: Civil Revision petition is filed under Section 115 of CPC, to set aside the order and decretal order passed in I.A.No.607 of 2014 in O.S.No.254 of 2010 dated 27.08.2014 on the file of the Principal District Munsif, Cheyyar, Tiruvannamalai.

For Petitioners : Mr.K.G.Senthilkumar

For Respondents : No appearance

ORDER

The present Civil Revision Petition has been filed against the Fair and Decretal order dated 27.08.2014 in I.A.No.607 of 2014 in O.S.No.254 of 2010 passed by the Principal District Munsif Court, Cheyyar.

2.By the impugned fair and decreetal order, the court below has dismissed the application filed under Section 5 of the Limitation Act. The first respondent was the plaintiff in O.S.No.254 of 2015. The suit was filed for partition of suit schedule property wherein the petitioners were defendants No 1 to 3.

3.An exparte preliminary decree also came to be passed on 03.04.2013. After the preliminary decree was passed, the I.A was filed on 30.06.2014 by the petitioners who are defendants 3, 4 and 5 in the suit along with the 2nd respondent herein to set aside the exparte order dated 03.04.2013 with a delay of 450 days.

4.In Affidavit filed in support of the said petition, the first petitioner has stated that he was suffering from jaundice and fracture in his leg therefore was unable to file vakalat or appear before the Court to file written statement in time and therefore prayed for condoning the delay of 450 days in filing the application to set aside the exparte decree passed on 03.04.2013

5.The respondent herein however objected to the same reason stating that here was no proof to confirm that the first petitioner was suffering from jaundice and fracture and had not adduced any evidence and submitted each every day for delay should have been explained.

It was submitted that there was no reasonable cause for condoning such an inordinate delay in filing the petition to set aside the exparte decree.

6.Considering the fact that the suit has been filed for partition of the family property between the members of the same family, the application to condone the delay deserves to be allowed however subject to cost. Ultimately, the rights of the parties can be worked out at the time of passing of the final decree. The petitioners shall pay a sum of Rs.10,000/- as cost to respondent at Rs.1000/- per year. Consequently, the impugned order passed by the District Munsif Court, Cheyyar is set aside subject to payment of cost.

7.The petitioners shall pay to the respondent the cost within a period of four weeks from the date of receipt of a copy of this order together with their written statement.

8.The suit is of the year 2010. Therefore, the learned Principal District Munsif, Cheyyar shall also accept written statement by the petitioners/defendants, if it is filed within the aforesaid period of four weeks from the date of receipt of a copy of this order. Thereafter, the learned Principal District Munsif shall endeavour to complete the proceedings within a period of nine months from the date of receipt of

C.SARAVANAN, J.

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a copy of this order and pass final judgment and decree and bring a
closure to the lis.

9. Accordingly, the present Civil Revision Petition stands allowed
with above observations. Consequently, connected Miscellaneous
Petition is closed.

27.02.2019

Index : Yes/No
Internet : Yes/No

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To
The Principal District Munsif, सत्यमेव जयते
Cheyyar, Tiruvannamalai.

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