



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) No. 606 of 2011

WEB COPY

1.Lakshmi Ammal

2.Vaikuntam

.. Petitioners/Petitioners
Plaintiffs

Vs.

1.Raju

2.Achammal (died)

[vide memo dated 11.02.2013]

3.T.Muthukumarasamy

.. Respondents/Respondents
Defendants

PRAYER: Civil Revision Petition is filed under Section 115 C.P.C. against the fair and decretal order dated 17.02.2011 made in I.A.No.611 of 2009 in O.S.No.114 of 2004 by the Sub Court, Thoothukudi by allowing this CRP.

For petitioners : Mr.V.Meenakshi Sundaram for
Mr.D.Nallathambi

For Respondent No.1 : M/s.Lakshmi Gopinathan
for M/s.Polax Legal Solutions.

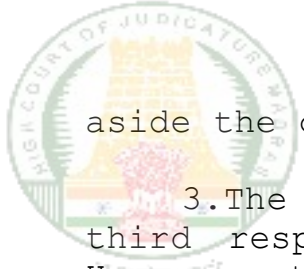
For Respondent No.3 : Mr.A.Rajaram

R2 :Died

ORDER

The petitioners/plaintiffs filed the suit in O.S.No.114 of 2004 for the relief of partition. Due to non-appearance on the part of the petitioners/plaintiffs, the Court below dismissed the suit for non-prosecution. Since there is a delay of 221 days in filing a petition to set aside the dismissal order, the petitioners / plaintiffs filed I.A.No.611 of 2009. The Court below dismissed the petition, against which, the present civil revision petition has been filed.

2.The learned counsel for the petitioners/plaintiffs would submit that the Advocates had abstained from attending the Court one week prior to 03.02.2009 and therefore, the learned counsel for the petitioners could not attend the Court below on 03.02.2009. The petitioners are aged people and therefore the delay has occurred. The Court below without considering the same, has erroneously dismissed the petition. Thus, he prayed to set



aside the order passed by the Court below.

3. The learned counsel for the first respondent as well as third respondent have no objection for allowing the revision. However, they would submit that in the event of allowing this petition, this Court may direct the Court below to dispose of the suit as expeditiously as possible.

4. Heard the learned counsel for the petitioners and the learned counsel for the first respondent as well as third respondent and also perused the materials available on record.

5. Perusal of records shows that the suit is filed for the relief of partition. The plaintiffs and the defendants 1 and 2 are relatives. The delay is 221 days. The reason assigned on the side of the petitioners/plaintiffs is that due to Advocates Boycott, the learned counsel for the petitioners/plaintiffs, did not appear before the Court below and therefore, the suit was dismissed for default. The respondents have no objection for allowing the revision. In view of the same and also in the interest of justice, this Court is inclined to set aside the order passed by the Court below on payment of cost of Rs.1,000/- [Rupees one thousand only] to the Legal Services Committee attached to this Bench, within a period of one week from the date of receipt of a copy of this order. It is needless to say that if the cost is not paid within a period of one week from the date of receipt of copy of order, the order passed by the learned Judge in I.A.No.611 of 2009 in O.S.No.114 of 2004, dated 17.02.2011 shall stand automatically restored and the civil revision petition will stand automatically dismissed without any further reference to this Court. Considering the fact that the suit is of the year 2004, on payment of cost of Rs.1,000/- to the Legal Services Committee attached to this Bench, the learned Judge shall pass orders on the restoration petition and dispose of the suit on merits and in accordance with law as early as possible, preferably within a period of six months, thereafter. Both parties are directed to cooperate with the Court below for early disposal of the suit.

6. The Civil Revision Petition is allowed on the above terms. No costs.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Sub Judge,
Thoothukudi.

2.The Officer Incharge
Legal Service Committee,
Madurai Bench of Madras High Court,
Madurai

Copy to
The Record Keeper,-2 copies
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.RAJARAM, Advocate (SR-61066[F] dated 15/04/2019)

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-61074[F] dated 15/04/2019)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-61156[F] dated 16/04/2019)

smn

**ORDER MADE IN
C.R.P (MD) No.606 of 2011
15.04.2019**

KM/ (22.05.2019) 3P 8C