



C.R.P. (NPD) No.116 of 2020
and CMP No.725 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (NPD) No.116 of 2020
and CMP No.725 of 2020

1. M.Natarajan

2. N. Pradeeskumar

.. Petitioners

Vs.

Santhimathi

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and final order dated 13.09.2019 in I.A.No.369 of 2017 in O.S..No.438 of 2011 on the file of I Additional Sub Court, Erode.

For Petitioners : Mr. S.Kaithamalai Kumaran

For Respondent : Mr. M.Guruprasad



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ORDER

The defendants are the petitioners. The suit in OS No.438 of 2011 was filed by the respondent, who is the daughter of the first petitioner and sister of the second petitioner, seeking partition and separate possession of her 1/3rd share in the suit properties.

2. The same was resisted by the defendants/petitioners herein, contending that the properties are not joint family properties, therefore the plaintiff/respondent has no right to seek partition during the lifetime of the first defendant. It was also contended that the plaintiff has orally relinquished her rights to three items of properties. The suit came to be decreed *ex-parte* on 15.12.2014. The defendants came up with instant application in IA No.369 of 2017, seeking condonation of delay of 239 days in setting aside the *ex-parte* decree. The reason assigned for the delay is that close relatives had advised the respondent to withdraw the suit and settle the dispute. It is also claimed that the respondent had agreed to such a



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course and she maintained the very cordial relationship with the defendant till the end of August 2015.

3. The petitioners would further plead that only on 01.09.2015 when the respondent had proclaimed in the presence of close relatives that she had obtained the decree on 15.12.2014, the petitioners came to know about the *ex-parte* decree and immediately approached the counsel to have it set aside. The fact that the suit was allowed to be dismissed for default on 04.01.2013 was also cited as a reason for the defendants not following up the suit.

4. This application was resisted by the defendant contending that the application is a deliberate attempt to drag on the proceedings and deny the just share due to her. She also claimed that she had never agreed to withdraw the suit. The learned Trial Judge upon a consideration of the claims made by the parties held that the petitioners have not made out a sufficient cause for condoning the delay of 239 days in filing an application.

5. The learned Trial Judge chose to rely upon the judgment of the



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Hon'ble Supreme Court in ***Lanka Venkateshwaralu (died) by L.Rs. v. State of Andrapradesh and others*** reported in ***2011 (3) LW 26***, and the judgment of this Court in ***D.Sundaraj v. K.Ashok***, reported in ***2001 (1) TLNJ 1***, in support of his conclusion that the term sufficient cause appearing in Section 5 of Limitation Act, must be strictly construed and the petitioners have not made out the cost for condonation of delay.

6. I have heard Mr.S.Kaithamalai Kumaran, learned counsel appearing for the petitioners and Mr.M. Guruprasad, learned counsel appearing for the respondent.

7. The Court must not only look into the sufficiency of the cause but the length of delay also matters. The delay is not very long, it is only 239 days. The Hon'ble Supreme Court in ***University of Delhi v. Union of India and others***, reported in ***(2020) 13 SCC 745***, has reiterated the law laid down by the Hon'ble Supreme Court in ***Collector, Land Acquisition, Anantnag & Another v. Katiji and Ors.***, reported in ***1987 (2) SCC 107***, wherein the Hon'ble Supreme Court has held that the Courts must be liberal in matters



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of delay.
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8. The suit is one for partition by a daughter and it is being resisted by the father and the brother on the ground that some of the properties are not ancestral properties. It is also seen that the suit was allowed to be dismissed for default and thereafter restored. This conduct of the plaintiff gives credence to the claim of the defendants/petitioners herein, that there was a negotiated settlement between them. It is also averred that one of the counsel for the defendants became a member of parliament and other was appointed as a judicial officer which led to the delay. A comprehensive analysis of the material that is available on record would show that the cause projected by the defendants for the delay is plausible. No doubt one can contend that every day's delay has to be explained, but the totality of the circumstances will have to be looked into.

9. Considering the facts that are projected, I am of the considered opinion, that the above judgment of the Hon'ble Supreme Court in *University of Delhi v. Union of India and others*, would squarely apply and



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the defendants should be given a chance to defend the suit on merits. Of course there has been some delay and the same can be compensated by the payment of cost.

10. For the foregoing reasons, the Civil Revision Petition is allowed, the order in IA No.369 of 2017 is set aside, IA No.369 of 2017 will stand allowed on payment of cost of Rs.5,000/- to the counsel for the respondent appearing in this Court on or before 03.12.2021, failing which the Civil Revision Petition will stand dismissed.

11. At this juncture, Mr.Guruprasad, learned counsel appearing for the respondent would submit that the *ex-parte* decree also can be set aside and the suit may be directed to be disposed of within a specific period of time. Taking note of his submission, the *ex-parte* decree in OS No.438 of 2011 dated 15.12.2014 is set aside in exercising the power under Article 227 of the Constitution of India. The Trial Court is directed to restore the suit to its file and dispose of it within a period of six months from the date of receipt of either a certified copy or a web copy of this order.



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Consequently, the connected miscellaneous petition is closed. No costs.

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Index: No
Internet: Yes
Speaking order
jv

To

1. The Sub Court,
Perundurai.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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R.SUBRAMANIAN, J.

jv

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