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C.R.P.(NPD).No.1203 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(NPD).No.1203 of 2019
and CMP.No.7754 of 2019

1.Ramasamy
2.Kolanji
3.Karunanithi

... Petitioners

Versus

1.Pounammal
2.Kalyani
3.Azhaganantham

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of CPC, praying to set aside the fair and final order dated 08.11.2018 passed by the learned Subordinate Judge, Ariyalur in I.A.No.480 of 2018, in O.S.No.84 of 2010.

For Petitioners : Mr.R.Gokulakrishnan

For Respondents : Mr.Kamadevan

ORDER

This Civil Revision Petition has been filed against the fair and final order dated 08.11.2018 passed by the learned Subordinate Judge, Ariyalur in I.A.No.480 of 2018, in O.S.No.84 of 2010.



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2.Heard both sides.

3.The Revision petitioners herein are the defendants 1, 5 and 6 in the suit in O.S.No.84 of 2010, on the file of the Subordinate Court, Ariyalur, which was filed by the respondents/plaintiffs for the relief of partition and other consequential relief. These petitioners have entered appearance through their counsel and filed their written statement also.

4.During the trial, at the time of cross examination of PW.1, these defendants were absent. So the trial Court set them ex-parte and other defendants contested the suit and thereafter, ex-parte decree was passed.

5.Based upon the decree, the plaintiffs preferred final decree application, after the receipt of the notice. After coming to know about the said decree, they filed an application to set aside the decree against them, but there is a delay of 1028 days. Hence, they filed an Interlocutory application under Section 5 of the limitation Act in I.A.No.480 of 2018, to condone the delay. On hearing objections from the plaintiffs, the trial Judge dismissed the



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8.It is true that the suit was filed in the year 2010 for partition by the plaintiffs and these defendants remained exparte at the time of the cross examination of PW.1, which would show that they want to drag on the proceedings. But, on seeing the nature of the claim i.e., the partition, all the parties concerned ought to be given fair opportunity to defend their claim. Otherwise, their rights in respect of the suit properties would not be adjudicated and it would lead to multiplicity of proceedings. It is also noted by this Court that no proof was attached for the illness but as discussed above, in order to give fair opportunity to the parties concerned, this Court is inclined to impose cost of Rs.10,000/- to the Revision Petitioners and the same shall be paid to the respondents, failing which, this Civil Revision petition shall stand dismissed. If the Revision Petitioners pay the cost and also justifying the fact that the suit is of the year 2019, the learned Subordinate Judge, Ariyalur, is directed to dispose the suit within a period of three months from the date of receipt of a copy of this order.



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9. Accordingly, this Civil Revision petition is disposed of.

Consequently, connected miscellaneous petition is closed. No costs.

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Internet : Yes / No

Index : Yes / No

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To

The Subordinate Judge,

Ariyalur.



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T.V.THAMILSELVI, J.

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