

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2021

CORAM:

**THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN**

**C.R.P (NPD) No.986 of 2018**

**and**

**C.M.P.No.5265 of 2018**

1. Arumuga Udayar  
2. Kamalam @ Kamalammal .... Petitioners

Vs.

A.Ramachandran .... Respondent

Prayer : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside fair and final order dated 15.03.2017 passed by the learned Principal District Munsif, Salem in I.A.No.481 of 2014 in O.S.No.707 of 2008.

For Petitioners : Mr.L.Mouli

For Respondent : Mr.P.Jagadeesan

**ORDER**

This Civil Revision Petition is directed against the fair and decretal order passed in I.A.No.481 of 2014 in O.S.No.707 of 2008 dated 15.03.2017 on the file of the learned Principal District Munsif, Salem, thereby dismissing the petition to condone the delay of 1680 in filing the application to set aside the ex-parte decree.

2. The petitioners are the defendants 1 and 3 and the respondent is the plaintiff. The respondent filed the suit for partition. The respondent is none other than the first wife's son of the first petitioner herein. The second petitioner is the second wife of the first petitioner herein. After receipt of the summons, the petitioners did not appear before the Trial Court and as such, they were set ex-parte and the ex-parte judgment and decree was passed on 27.04.2009. According to the petitioners, after filing of the suit, there was a Panchayat between the parties in front of the Panchayatars. During the said Panchayat, the respondent's issue was settled by paying a sum of Rs.3 lakhs to the respondent in the month of March 2012 and a memorandum of compromise was entered. As per the said memorandum of compromise, the first petitioner paid a sum of Rs.3 lakhs to the respondent on 20.03.2012. In the said Panchayat, the respondent had also undertaken to withdraw the suit filed by him for partition. On such payment, the first petitioner was under the impression that the suit was withdrawn by the respondent herein. But the respondent did not withdraw the suit and as such, the petitioners were set ex-parte before the trial Court and the ex-pate preliminary decree was passed. Only because of the said Panchayat, they did not file the petition to set aside the ex-parte decree in time. In support of his contentions, the

petitioners were examined as P.W.1 to P.W.3 before the Trial Court. P.W.2 and P.W.3 are set to have participated in the Panchayat.

3. On a perusal of their evidence, they have absolutely no knowledge about the Panchayat held between the parties and also no knowledge about the payment of Rs.3 lakhs to the respondent herein. Therefore, the reason assigned in the affidavit filed in support of the condone delay petition is not proved by the petitioners herein

4. The learned counsel for the petitioners also raised another ground that the ex-parte judgment is not in consonance with the Order XX Rule 4 of the Civil Procedure Code. When the petitioners stated false reasons in the affidavit filed in support of the condone delay petition and also not stated sufficient reasons for the huge delay of 1680 days, the other grounds raised by the petitioners cannot be looked into. Therefore, the petitioners also failed to produce any document to show that the sum of Rs.3 lakhs was paid to the respondent during the Panchayat. No prudent man would fail to receive any receipt on payment of Rs.3 lakhs, that too in the Panchayat. Therefore, the Trial Court rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below.

**G.K.ILANTHIRAIYAN,J.**

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5. Accordingly, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

23.06.2021

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Index :Yes/No

Internet : Yes/No

To

1. The Principal District Munsif, Salem.
2. The Section Officer,  
V.R. Section, High Court of Madras.



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