



C.R.P. (NPD) .No.2244 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.2244 of 2017

and

C.M.P.No.10619 of 2017

Xavier (Deceased)

1.Lilly

2.Arulappan Varghese

3.Philomina

4.Joseph

.. Petitioners

Vs.

1.Thraismmal

2.Elizabeth

3.Pauli

4.Mari

5.Kunjammal

6.Jayaseeli

.. Respondents



Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 30.09.2016 made in I.A.No.26 of 2015 in A.S.C.F.R.No.366 of 2015 on the file of the Sub Court, Udthagamandalam against O.S.No.15 of 2006 on the file of the Additional District Munsif Court, Gudalur @ Nilgiris.

For Petitioners : Mr.D.J.Venkatesan

For RR 1 & 2 : No appearance

For RR 3 to 6 : Not ready in notice

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decretal order dated 30.09.2016 made in I.A.No.26 of 2015 in A.S.C.F.R.No.366 of 2015 on the file of the Sub Court, Udthagamandalam against O.S.No.15 of 2006 on the file of the Additional District Munsif Court, Gudalur @ Nilgiris.

2.The petitioners are the legal heirs of the sole defendant in O.S.No.15 of 2006 on the file of the Additional District Munsif Court, Gudalur @ Nilgiris. The respondents filed the said suit for partition and separate



possession of their 8/9th share in the suit property. A preliminary decree was passed on 21.12.2010. The defendant died on 09.02.2014. According to the petitioners, they did not know about the suit and preliminary decree. They came to know about the suit and preliminary decree only when they received notice in I.A.No.21 of 2014 filed by the respondents to implead them as respondents in the final decree application. According to the petitioners, they verified with counsel who appeared for the defendant in the suit, but he did not properly guide them and handed over the judgment and decree only on 20.02.2015, which was obtained by the counsel for defendant on 23.09.2013. On receipt of the said judgment and decree, they filed an appeal challenging the preliminary decree along with the present I.A.No.26 of 2015 to condone the delay of 1496 days in filing the appeal. Before the learned Judge, the respondents 3 to 6 did not enter appearance and they were set exparte. The respondents 1 & 2 died. The learned Judge held that application is abated against the respondents 1 & 2, the counsel for the respondents 1 & 2 and petitioners did not take any steps to implead the legal heirs of the respondents 1 & 2 and dismissed the I.A., holding that the petitioners have not given any valid reason for condoning the delay.



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3. Against the said order of dismissal dated 30.09.2016 made in I.A.No.26 of 2015, the petitioners have come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioners submitted that the learned Judge ought to have considered the application filed by the petitioners to condone the delay liberally, when the respondents have not entered appearance and that petitioners are the legal heirs of the sole defendant and not party to the suit. The learned Judge erred in not accepting the plea of petitioners that they were not aware of the partition suit filed by the respondents. The sole defendant was suffering from cancer and died on 09.02.2014. The petitioners have given sufficient reason for the delay in filing the appeal and prayed for allowing the Civil Revision Petition.

5. Though notice has been served on the respondents 1 & 2 and their names are printed in the cause list, there is no representation for them, either in person or through counsel.



6.In the Civil Revision Petition, as per the order of this Court, the respondents 3 to 6 were served through Mr.V.S.Isaac, Advocate, Court Road, Gudalur – 643 211, The Nilgiris District, who is conducting the case on behalf of the respondents 3 to 6 before the Trial Court. Though the names of the respondents 3 to 6 as well as the learned counsel appearing for the respondents 3 to 6 are printed in the cause list, there is no representation on behalf of respondents 3 to 6.

7.Heard the learned counsel appearing for the petitioners and perused the entire materials on record.

8.From the impugned order of the learned Judge, it is seen that the respondents 1 & 2 died at the time of hearing the application. The learned Judge held that the present I.A. is abated as against the respondents 1 & 2 as the petitioners have not taken any steps to bring on record the legal heirs of the respondents 1 & 2. At the time of filing the Civil Revision Petition, the petitioners impleaded the respondents 1 & 2 as parties in the Civil Revision Petition. Civil Revision Petition against dead person is not maintainable and is dismissed against the respondents 1 & 2.



9.From the materials available on record, it is seen that the suit filed against the deceased defendant is for partition. According to petitioners, after preliminary decree, sole defendant died on 09.02.2014, as he was suffering from cancer. The petitioners did not know about the suit filed against the defendant and also the preliminary decree passed against him. They came to know about the suit and preliminary decree only when they received notice in I.A.No.21 of 2014, filed to implead the petitioners as respondents in the application filed by the respondents for final decree. From the materials on record, it is seen that it is the contention of the petitioners that they contacted their advocate, who conducted the case on behalf of the defendant and the advocate received the copy of the judgment and decree on 23.09.2013 and the said advocate did not inform the same to the defendant or the legal heirs of the defendant. In the mean time, the defendant died on 09.02.2014. The petitioners obtained the judgment and decree from the advocate on 20.02.2015 and filed appeal. Considering the fact that suit is for partition, defendant died after preliminary decree was passed and the petitioners are legal heirs of the deceased defendant, in the interest of justice, this Court is of the view that an opportunity must be given to the petitioners to put forth their case on merits. From the materials on record, it is seen that the reason given



by the petitioners for delay is acceptable and intention of the petitioners is not malafide to protract the proceedings. It is also pertinent to note that petitioners received notice in I.A. to implead them in the final decree only in the year 2015. In view of the above, the impugned order of the learned Judge passed in I.A.No.26 of 2015 in A.S.C.F.R.No.366 of 2015 is set aside. The learned Judge is directed to number the appeal, if it is otherwise in order and dispose of the same on merits and in accordance with law.

10. With the above direction, this Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

02.11.2021

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Index : Yes / No
Internet : Yes / No

To

1. The learned Subordinate Judge,
Udhagamandalam.
2. The learned Additional District Munsif,
Gudalur @ Nilgiris.



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V.M.VELUMANI, J.
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