



C.R.P.(NPD)Nos.857 and 858 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.857 and 858 of 2017
and C.M.P.No.4223 of 2017

1.Pappathi

2.Shanthi

.. Petitioners

in both CRPs.

Vs.

1.S.Selvakumar

2.V.N.Sekar

.. Respondents

in both CRPs.

COMMON PRAYER: Civil Revision Petitions filed under Section 151 of C.P.C. against the fair and decretal order dated 07.12.2016 made in E.A.Nos.368 and 376 of 2016 in E.A.No.307 of 2012 in E.P.R.No.77 of 2011 in O.S.No.404 of 2006 on the file of I Additional Sub Court, Erode. **In both CRPs.**

For Petitioners : Mr.P.K.Harinath Babu

for Mr.T.Shanmugam



C.R.P.(NPD)Nos.857 and 858 of 2017

For R1 : Mr.V.S.Kesavan

For R2 : No appearance

COMMON ORDER

Civil Revision Petitions are filed against the fair and decretal order dated 07.12.2016 made in E.A.Nos.368 and 376 of 2016 in E.A.No.307 of 2012 in E.P.R.No.77 of 2011 in O.S.No.404 of 2006 on the file of I Additional Sub Court, Erode.

2.Issues involved in both the Civil Revision Petitions and the parties are one and the same and hence, they are disposed of by this common order.

3.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

4.Heard the learned counsel appearing for the petitioners, who is appearing before this Court physically as well as the learned counsel



C.R.P.(NPD)Nos.857 and 858 of 2017

appearing for the 1st respondent through Video Conferencing/Hybrid Mode and perused the entire materials available on record.

5.The petitioners are third parties, 1st respondent is plaintiff and 2nd respondent is defendant in O.S.No.404 of 2006 on the file of I Additional Sub Court, Erode. The 1st respondent filed the said suit against the 2nd respondent for recovery of money. The 2nd respondent filed written statement, but did not appear, when the trial commenced. He was set exparte and exparte decree was passed on 05.09.2008. The 1st respondent filed E.P.R.No.77 of 2011 against the 2nd respondent to realise the amount as per the decree dated 05.09.2008 by sale of property mentioned in the E.P. According to the 1st respondent, the property belongs to 2nd respondent. The 2nd respondent filed counter statement in the E.P. and after contest, the Execution Court ordered sale of property. At that stage, the petitioners filed E.A.No.307 of 2012 under Order XXI Rule 58 and Section 151 of C.P.C. claiming 2/3rd shares in the property ordered to be sold.



C.R.P.(NPD)Nos.857 and 858 of 2017

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6. According to the petitioners, the property originally belonged to one Nachimuthu, husband of the 1st petitioner, father of the 2nd petitioner and 2nd respondent. The 2nd respondent is not absolute owner of the property. After death of Nachimuthu, the petitioners and 2nd respondent succeeded the said property, each of them have 1/3rd share in the suit property and hence, the petitioners claimed 2/3rd shares in the suit property.

7. The 1st respondent filed counter affidavit and opposed the said application.

8. In the said E.A., the 1st petitioner filed proof affidavit to examine as P.W.1 and the same was posted for cross-examination of 1st petitioner. Even after several adjournments, the 1st petitioner did not appear subjecting herself for cross-examination in the said E.A.No.307 of 2012. The said E.A. was dismissed on 23.01.2015. The petitioners filed E.A.No.368 of 2016 under Section 5 of the Limitation Act to condone the delay of 521 days in filing the petition to restore E.A.No.307 of 2012.



C.R.P.(NPD)Nos.857 and 858 of 2017

According to the petitioners, on 23.01.2015, the 1st petitioner was not well, the 2nd petitioner was looking after her and therefore, they could not appear before the Court on 23.01.2015. The petitioners have also filed E.A.No.376 of 2016 under Section 151 of C.P.C. for stay of further proceedings in E.P.R.No.77 of 2011 till the disposal of the petitioners' application to restore the claim application in E.A.No.307 of 2012 as well as E.A.No.368 of 2016 filed to condone the delay of 521 days in filing the petition to restore E.A.No.307 of 2012 alleging on the very same averments.

9.The 1st respondent filed counter affidavit in E.A.No.376 of 2016 and stated that the reasons given by the petitioners are not valid and only after conducting public auction, the petitioners have come out with the said E.A. with a view to prevent the 1st respondent from enjoying the fruits of the decree and to protract the E.P. The 1st respondent filed a memo in E.A.No.368 of 2016 to treat the counter affidavit filed in E.A.No.376 of 2016 as counter affidavit of E.A.No.368 of 2016.



C.R.P.(NPD)Nos.857 and 858 of 2017

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10.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed both the E.As.

11.Against the said common order dated 07.12.2016 made in E.A.Nos.368 and 376 of 2016 in E.A.No.307 of 2012 in E.P.R.No.77 of 2011 in O.S.No.404 of 2006, the petitioners have come out with the present two Civil Revision Petitions.

12.From the materials on record, it is seen that the petitioners have filed E.A.No.307 of 2012 claiming 2/3rd shares in the suit property sought to be sold to realise the amount as per the decree dated 05.09.2008 passed against the 2nd respondent. The 1st respondent filed counter affidavit and opposed the said application. The said E.A.No.307 of 2012 was pending from 29.11.2012 to 15.10.2014 for examination of witness on behalf of the petitioners. On 15.10.2014, the 1st petitioner filed proof affidavit and marked four documents Exs.A1 to A4. E.A.No.307 of 2012 was adjourned from 05.11.2014 to 23.01.2015 on several dates for



C.R.P.(NPD)Nos.857 and 858 of 2017

cross-examination of 1st petitioner. The 1st petitioner did not appear subjecting her for cross-examination. Hence, E.A.No.307 of 2012 was dismissed on 23.01.2015. The petitioners did not take any immediate steps for restoration of said E.A. The petitioners filed E.A.No.368 of 2016 on 28.07.2016 to condone the delay of 521 days to restore E.A.No.307 of 2012. According to the petitioners, the 1st petitioner was not well on 23.01.2015, the 2nd petitioner was attending on 1st petitioner and therefore, they could not appear before the Court on that day. The petitioners have not furnished any details of nature of illness of 1st petitioner and for how long she was suffering from illness. The only reason given by the petitioners is that on 23.01.2015, the 1st petitioner was not well and 2nd petitioner was attending the 1st petitioner. On the other hand, it is the contention of the 1st respondent that only after public auction, the petitioners have come out with present E.As. to prevent the 1st respondent from enjoying the fruits of the decree passed in O.S.No.404 of 2006 and to protract E.P.R.No.77 of 2011. This contention has considerable force and is acceptable.



C.R.P.(NPD)Nos.857 and 858 of 2017

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13.It is well settled that application for condoning the delay must be considered liberally and number of days is not a criteria. At the same time, the party must give acceptable and valid reason for the delay and also intention of the party must be bonafide and should not be malafide. In the present case, the petitioners have not given any valid and acceptable reasons for the delay of 521 days in filing petition to restore E.A.No.307 of 2012. The learned Judge considering the above materials, dismissed E.A.No.368 of 2016 to condone the delay of 521 days. In view of the dismissal of E.A.No.368 of 2016, the learned Judge has also dismissed E.A.No.376 of 2016. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

14.For the above reasons, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.10.2021

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8/10



C.R.P.(NPD)Nos.857 and 858 of 2017

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I Additional Subordinate Judge
Erode.



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C.R.P.(NPD)Nos.857 and 858 of 2017

V.M.VELUMANI, J.

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C.R.P.(NPD)Nos.857 and 858 of 2017
and C.M.P.No.4223 of 2017

25.10.2021