



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

WEB COPY

C.R.P (MD)No.2337 of 2012

and

M.P (MD)No.1 of 2012

1.K.Karuppiyah
2.Irulappan
3.B.Krishnan
4.K.Perumalsamy
5.C.Raju
6.P.Karuppasamy
7.A.Mookandi
8.Sivajiganesan
9.P.Perumal
10.P.Govindan

... Revision Petitioners/Petitioners
Defendants 1 to 10

vs

1.C.Perumal
2.C.Karuppasamy
3.T.Karuppan
4.T.Periakaruppasamy
5.T.Chinna Karuppasamy
6.T.Kutty Karuppasamy
7.T.Muniammal
8.S.Chinna Karuppasamy
9.S.Peria Karuppasamy
10.S.Karupai

... Respondents 1 to 10/
Respondents 1 to 10/Plaintiffs

11.The President Kuvalaikanni,
Panchayat Kuvalaikanni,
Sankarankovil Taluk,
Tirunelveli District.

... 11th Respondent/11th Respondent/
14th Defendant

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, seeking to revise and set aside the dismissal order dated 19.06.2012 passed in I.A.No.1668 of 2011 in O.S.No.182 of 2003 by the Principal District Munsif Court, Sankarankovil.

For Petitioners	: Mr.S.Ramesh alias Ramiah
For RR 1 to 10	: Mr.F.X.Eugene
For R - 11	: No appearance



ORDER

The Civil Revision Petition is directed against the order, dated 19.06.2012 passed in I.A.No.1668 of 2011 in O.S.No.182 of 2003 by the Principal District Munsif Court, Sankarankovil, refusing to condone the delay of 1415 days in filing the petition under Order 9 Rule 13 of C.P.C.

2.The suit in O.S.No.182 of 2003, on the file of the Principal District Munsif Court, Sankarankovil, was filed by the respondents 1 to 10/plaintiffs for partition, declaration and injunction and the said suit was decreed on 13.02.2004 ex-parte. The revision petitioners herein have filed an application in I.A.No.1668 of 2011 in O.S.No.182 of 2003, after a delay of 1415 days to set aside the ex-parte decree. The reasons assigned by the eighth defendant, in whose sworn affidavit, it is stated that he was taking Ayurvedic treatment in Kerala and he was unable to keep in touch with his Advocate. As he stated that he was in Kerala for treatment for more than 2-1/2 years, he was not aware of the ex-parte decree passed and only when the plaintiffs had filed an application for final decree, he had the knowledge about the passing of the preliminary decree and immediately, he has filed an application to set aside the ex-parte decree with a delay of 1415 days. The trial Court dismissed the application, as the delay is inordinate and there is no just and sufficient cause. Aggrieved by the same, the above Civil Revision Petition is filed.

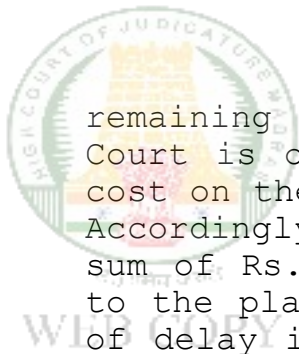
3.Heard the learned counsel appearing on either side and perused the materials available on record.

4.The only point that has to be determined is whether the inordinate delay of 1415 days has to be condoned or not?

5.Admittedly, the revision petitioners have not filed any document to show that the eighth defendant was taking Ayurvedic treatment in Kerala, though it was stated in the affidavit that he was in Kerala for more than 2-1/2 years. Further, there is no reason as to why the other defendants were absent. Admittedly, the plaintiffs and defendants are related to each other and each of them are entitled to have a share. Whiles, it would be appropriate that the other sharers are also to be heard before a decree being passed.

6.It has been repeatedly held that a liberal and lenient view has to be taken in condoning the delay as the hyper-technicalities should not prejudice the interest of litigant. After the decree was obtained, there is no progress in the case, as there has been a stay of operation as against the respondents 1 to 10/plaintiffs herein.

7.In such view of the matter, it would be appropriate to permit the revision petitioners also to participate in the suit and contest the same. However, having delayed the progress of the suit by



remaining ex-parte, without any just and sufficient cause, this Court is of the view that it would be appropriate to impose heavy cost on the revision petitioners for allowing the delay application. Accordingly, the revision petitioners herein are directed to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) towards cost to the plaintiffs as a condition to condone the delay of 1415 days of delay in setting aside the ex-parte decree. The said amount of Rs.25,000/- has to be paid within a period of four weeks from the date of receipt of a copy of this order, after which, the delay will be condoned and application filed under Order 9 Rule 13 of C.P.C will be taken up for hearing by the learned Principal District Munsif, Sankarankovil.

8. With the above directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PS

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Principal District Munsif,
Sankarankovil.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2-copies)

+1CC to Mr.S.RAMESH @ RAMAIAH, Advocate (SR-10437[F] dated 11/03/2021)

Order made in
C.R.P (MD) No.2337 of 2012 and
M.P (MD) No.1 of 2012
11.03.2021

SSS (CO)

SRS (19/03/2021) 3P : 5C

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