



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Wednesday, the Twenty Second day of June Two Thousand and Twenty Two

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PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CMP(MD) . No.7742 of 2021
in
CRP(MD) .NO.193/2008

Rajendran (Died)

Mahendran(Died)

... Nil/Petioners

L.Rs of Rajendran

3. Nalaeni
4. R.Muthalvan
5.R.Thiruvalan

...Petitioners/Proposed Petitioners 3 to 5/
Lrs of 1st Petioner

Vs

1 Jagatheeswari

2 Chandra

... Respondents/Respondents

Prayer :-

This Civil Miscellaneous Petition is filed under section 5 of the Limitation Act to condone the delay of 1117 days in filing the restoration petition in CRP(MD)No.193 of 2008 on the file of this Honourable Court, which was dismissed for default on 01.02.2017.

Prayer in CRP(MD) No.193 of 2008:- This Civil Revision Petition is filed under Article 227 of the constitution of India against the order dated 13/04/2007 passed in I.A.No.64 of 2007 in O.S.NO.16 of 2007 by the Subordinate Judge, Uthamapalayam permitting postponing the decision to trial on departure new points without eschewing them from pleading allow the I.A.NO.64 of 2007 in O.S.NO.16 of 2007.

ORDER:- This Civil Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.R.A.Mohanram , Advocate for the Petitioner and of Mr.N.Tamilmani , Advocate for the first respondent, and Mr.A. Arumugam for M/s.Ajmal Associates, Advocate for the second respondent, this Court made the following



This Civil Miscellaneous Petition is filed to condone the delay of 1117 days in filing the petition to restore the Civil Revision Petition in CRP(MD)No.193 of 2008, which was dismissed for default on 01.02.2017.

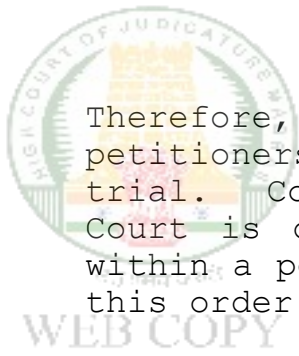
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2. CRP(MD)No.193 of 2008 is filed against the order dated 13.04.2007 passed in I.A.No.64 of 2007 in O.S.No.16 of 2007 by the learned Subordinate Judge, Uthamapalayam.

3. The learned counsel appearing for the petitioners submits that I.A.No.64 of 2007 was filed under Order 6 Rule 16 and Section 151 of C.P.C. to strike down the pleadings of the amended plaint filed by the second respondent. According to the petitioners, initially, the second respondent was not added as a party in the suit proceedings. However, her husband claimed 1/16th share in the suit schedule property. After the demise of her husband, she filed an application before this Court in C.M.P.Nos.9446 to 9448 of 2000 in A.S.No.227 of 1984 and after the order of this Court passed in that applications on 04.07.2001, she was added as a party in the suit. Thereafter, she claimed that she is entitled for 1/4th share in the suit schedule properties as she is one of the legal heirs of the deceased Chinna Thevar. Hence, her new pleadings are contrary to the earlier pleadings made by her deceased husband. Therefore, to strike out the amended plaint, the above interlocutory application was filed. Without considering the said facts, the trial Court, by order dated 13.04.2007, partly allowed the said application, by stating that the issue as to whether the second respondent, namely, Chandra, is the legal heir of the deceased Chinna Thevar and whether she is entitled for equal share in the suit properties, can be decided only at the time of trial. The trial Court further held that as per the direction of this Court in CRP.No.1881 of 2003 dated 11.01.2007, proceedings of the suit has to be done on day-to-day basis without any further delay and the petition is filed only to drag on the proceedings. Challenging the same, the present Civil Revision Petition is filed. Since there was no representation for the revision petitioners on 11.01.2017 and 01.02.2017, the Civil Revision Petition was dismissed for default on 01.02.2017. Thereafter, this application is filed on 31.08.2021 with the delay of 1117 days in filing the petition to restore the Civil Revision petition, which was dismissed for default on 01.02.2017.

4. When this Court verified with the learned counsel on either side about the stage of the trial as on date, the learned counsel appearing for the first respondent/plaintiff submits that by referring this Civil Revision Petition, the trial Court has periodically adjourned the case.

5. This Court is not satisfied with the reasons assigned for the delay of 1117 days in filing the restoration petition.



Therefore, the Civil Miscellaneous Petition is dismissed. The petitioners are at liberty to raise all the grounds at the time of trial. Considering that the suit is of the year 2017, the trial Court is directed to conclude the trial and dispose of the suit within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/12/2022

Sub Assistant Registrar(CS)

TO

The Subordinate Judge, Uthamapalayam.

Copy to:

The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai

+ 1 cc TO Mr.R.A.Mohanram , Advocate in SR No. 27401

+ 1 cc TO Mr.M.N.Tamilmani , Advocate in SR No. 27528

ORDER DATED : 22/06/2022

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Order
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CMP(MD) . No.7742 of 2021
in
CRP(MD) .NO.193/2008

Giving direction and etc.
as stated within.

SS/30/11/2022/ 3P 5C