



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD) No.1191 of 2021

and

C.M.P.(MD) No.6908 of 2021

1.P.Periyasamy

2.P.Radha

3.P.Ramesh

.. Petitioners/Respondents 1 to 3/
Respondents 1 to 3

-vs-

1.Ponnammal

2.P.Senthamilselvan

.. 1st Respondent/Petitioner/Appellant

.. 2nd Respondent/4th respondent/4th Respondent

Prayer :- Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 02.09.2020 passed in I.A.No.278 of 2019 in A.S.S.R.No.5610 of 2013 on the file of the District Judge, Karur.

For Petitioners	:	Mr.A.Mohamed Haneef
For R1	:	Mr.Mr.V.Balaji
For R2	:	No appearance

ORDER

The revision petitioners, who were defendants 1 to 3 in the suit in O.S.No.13 of 2007 on the file of the Subordinate Judge, Karur, are before this Court challenging the order dated 02.09.2020, passed in I.A.No.278 of 2019 in A.S.SR.No.5610 of 2013 on the file of the District Judge, Karur.

2.The suit in O.S.No.13 of 2007, preferred by the 1st respondent herein, was dismissed by judgment dated 31.01.2011, by the learned Principal Subordinate Judge, Karur as against which the 1st respondent had preferred first appeal in A.S.SR.No.5610 of 2013 before the District Judge, Karur with a delay of 214 days. In order to condone the same, the 1st respondent has filed an application in I.A.No.278 of 2019. This application came to be allowed on costs of Rs.1,500/- and challenging the same, the petitioners/defendants 1 to 3 are before this Court.

3.The 1st respondent/plaintiff had filed the above referred suit for a partition and separate possession of her $\frac{1}{2}$ share in the suit scheduled properties and for awarding mesne profits. She had



claimed her right to the suit properties as the legal heir of her father Ramawamy, who was the owner of the property. The 1st defendant is her brother and defendants 2 and 3 are the sons of the 1st defendant. She had submitted that her father died intestate and therefore, she was also entitled to a share in the same. The claim was refuted by the 1st defendant contending that the properties were ancestral joint family properties of his father Ramasamy and on 27.08.1981, his father Ramasamy and Ramasamy's brother had partitioned these properties and the suit properties were allotted to the share of his father Ramasamy. The 1st defendant would contend that he therefore, became entitled to a share in the property and on 30.04.1999, there was a partition between Ramasamy and the 1st defendant in which Item Nos. 1 and 2 of the suit properties alone were allotted to the share of Ramasamy and the remaining properties were allotted to the share of the 1st defendant. It was also his case that it was he, who was taking care of his father and he taken it upon himself to discharge the borrowings of his father, which were taken for his medical necessity. The 1st defendant would submit that most of the properties, which had been allotted to the share of Ramasamy, had to be alienated in order to meet his medical expenses. Ultimately, the 1st defendant had contended that if the plaintiff was found to be entitled to a share in Item Nos.1 and 2 of the suit scheduled properties, she could claim a share only after paying her proportionate share of the debts. The learned Principal Subordinate Judge, Karur by judgment dated 31.01.2011, was pleased to dismiss the suit and challenging the same, the plaintiff/1st respondent had filed the first appeal with the delay.

4. In the affidavit filed in support of the condone delay petition, the plaintiff would contend that after she had received the judgment copy on 04.07.2011, she had misplaced the copy of the same in her house and was unable to trace it out immediately. She had also thereafter suffered from Jaundice and was unable to contact her counsel to give necessary instructions. In the process, the delay had occurred.

5. Defendants 1 to 3 had filed their counter and additional counter stating that the reason given in the affidavit filed in support of the application was a concocted one and there was no illness as stated therein. That apart, the plaintiff had filed a petition for cancelling the Settlement Deed executed by the 1st defendant in favour of his son Ramesh and on the basis of the same, the District Registrar, Karur had initiated an enquiry. Ultimately, the complaint was dismissed on 20.08.2018. Thereafter, a criminal complaint was made to the Land Grabbing Cell, Karur. All of these factors have been suppressed in the affidavit filed in support of the said application. Therefore, it is the case of the petitioners that the delay should not be condoned.

6. The learned District Judge, Karur after hearing the parties,



held that adequate reasons had been given and interest of justice demands that the Court should not shut off a litigant on the basis of a delay which has been explained. It is this order that has been taken up on challenge by the petitioners. The ground on which the same is challenged is that no documentary evidence has been filed in support of the contention that the plaintiff was suffering from Jaundice and that there is a total non-application of mind on the part of the learned District Judge, Karur.

7.The learned counsel appearing for the petitioners has reiterated the contentions raised by him in the counter to the condone delay petition as well as the grounds raised.

8.It is seen that the plaintiff has been diligently contesting the suit and the judgment of the Trial Court is a contested judgment. The plaintiff has given adequate reasons for condoning the delay. It has been time and again reiterated by the Apex Court as well as by this Court that while considering a petition for condoning the delay, a liberal approach has to be taken and the Court has to sift through the contentions of the affidavit to find out if the party has made out a bona fide reason. In the instant case, as rightly held by the learned District Judge, Karur, the plaintiff has given sufficient reason for the delay and I do not find any reason to disagree with the finding and order of the court below. Hence, the Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

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 District Judge, Karur.

2.The Principal Subordinate Judge,
Karur.



+1 CC to M/s.M.P. SENTHIL, Advocate (SR-
34719[F] dated 17/11/2021)

C.R.P. (MD) No.1191 of 2021
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TSK(CO)

KB(08.12.2021) 4P 4C