

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	22.12.2020
DELIVERED ON	18.01.2021

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI
C.R.P.(MD)No. 1677 of 2016 (PD)
and CMP (MD) No. 8176 of 2016

1. Manikandan
2. Thaiyalnayagi

... Petitioners/Petitioners/Defendants

vs.

Sumathi

... Respondent/Respondent/Plaintiff

PRAYER: Petition filed under Section 115 of CPC, to set aside the order, dated 26.04.2016 made in I.A. No. 204 of 2012 in O.S. No.8 of 2009 on the file of the learned Additional Subordinate Court, Kumbakonam, Thanjavur District and allow the above Civil Revision Petition.

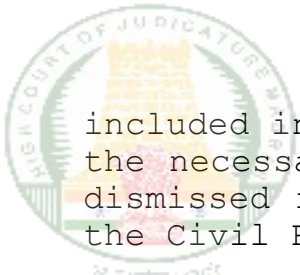
For Petitioners : Mr.B. Jameel Arasu
For Respondent : No appearance

O R D E R

The Civil Revision Petition has been filed to set aside the order, dated 26.04.2016 made in I.A. No. 204 of 2012 in O.S. No.8 of 2009 on the file of the learned Additional Subordinate Court, Kumbakonam, Thanjavur District.

2. The respondent/respondent/Plaintiff has filed a suit in O.S. No.8 of 2009 on the file of the Additional Subordinate Court, Kumbakonam. An exparte order was passed on 28.08.2009 against the revision petitioners herein and against the exparte decree, the revision petitioners have filed a petition in I.A. No.204 of 2012 in O.S. No.8 of 2009 to condone the delay of 1021 days in filing the petition to set aside the exparte decree and the same was dismissed with Costs. Hence, the revision petitioners are before this Court.

3. The learned counsel appearing for the revision petitioners submitted that the suit has been filed for partition among the three family members only and the second respondent herein who is none other than the mother of the respondent herein. He further submitted that without considering the fact that the respondent chose to file the above suit eventhough these petitioners want to compromise the partition in an amicable manner and on this ground alone the revision petitioners ought to have been allowed. He further submitted that the suit has been filed by suppressing the fact that the property of a local temple was also



included in the schedule filed along with the plaint without joining the necessary temple authorities and hence the suit is liable to be dismissed for non joinder of necessary parties. He prayed to allow the Civil Revision Petition.

4. The revision petitioners/petitioners/defendants have filed this revision to set aside the order in I.A. No. 204 of 2012 in O.S. No. 8 of 2009 on the file for the Additional Subordinate Court, Kumbakonam.

5. The petitioners have filed a petition in I.A. No. 204 of 2012 under Section 5 of Limitation Act to condone the delay of 1021 days in filing the petitioner under Order 9 Rule 13 petition.

6. The reason for non-appearance of petitioners is that the second petitioner was suffered from ill and the first petitioner is a driver he went out of station frequently. Therefore, they could not appear before the Court below.

7. Admittedly, summons were served to the petitioners. But, the suit was filed for partition. The first petitioner claimed right through a Will. Eventhough the reason is not genuine, to decide the real issue one more chance to be given to the petitioners. Further, the first petitioner appeared before the Mediation Centre also only the respondent/plaintiff was not cooperated for mediation. Therefore, this Court is inclined to allow the petition. Delay is to be condoned by Costs.

8. In the result, the Civil Revision Petition is allowed on payment of Costs of Rs.2,000/-[Rupees Two Thousand Only] as Costs, to the State Legal Services Authority attached to this Bench, Madurai, on or before 27.01.2021, if the revision petitioners fail to comply with the condition, the Civil Revision Petition shall stand dismissed automatically. Consequently, connected miscellaneous petition is closed.

9. Post the matter for reporting compliance, on 29.01.2021.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1)The Officer-in-Charge,
State Legal Services Committee,
Madurai Bench of Madras High Court, Madurai.

2)The Additional Subordinate Judge, Kumbakonam,
Thanjavur District.



3) The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

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Order made in

C.R.P. (MD) No. 1677 of 2016 (PD)

18.01.2011

sv2 (CO)

KK (22.01.2021) 3P 5C