



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.1907 of 2017

and

C.M.P(MD) No.4163 of 2018

1.Minor Lavanya

2.Minor Sanjeevi

(Minor petitioners 1 and 2 rep. by their mother &
Guardian 3rd petitioner herein)

3.Parimala

... Petitioners/ Petitioners/
Appellants/ Defendants 1-3

Vs.

Sethupathi (died)

1.Thanganachiyar

... Respondents/ Respondents/
Plaintiffs

2.Seethalakshmi

... Respondent/ Respondent/
Defendant 4

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 05.04.2017 and made in I.A.No.52 of 2015 in A.S.No.77 of 2007 on the file of the District Court, Sivagangai and set aside the same and allow this civil revision petition.

For Petitioner : Mr.S.Srinivasa Raghavan

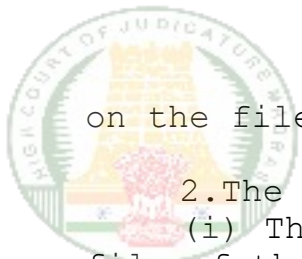
For R1 : Mr.S.Sundararajan

For R2 : Mr.S.Balasubramania Iyer

ORDER

This revision has been filed by the defendants 1 to 3 challenging the dismissal of their application to condone the delay of 2218 days in filing the application to restore A.S.No.77 of 2007

<https://hservices.ecourts.gov.in/hservices/>



on the file of the District Court, Sivagangai.

2.The facts in brief are as follows:-

(i) The plaintiffs had filed a suit in O.S.No.4 of 2005 on the file of the Sub Court, Sivagangai for partition of their 1/3rd share in the A schedule property and 2/4th share in the B schedule property. The suit was decreed after contest by the defendants/revision petitioners herein. The revision petitioners are the brother's wife and children of the first plaintiff. The suit was decreed granting 1/3rd share to the first defendant in the A schedule property and 1/3rd share to the fourth defendant in the A schedule property. In the B schedule property, the plaintiffs were granted half share and the fourth defendant a 1/4th share. Challenging the said judgment and decree, the revision petitioners herein had filed A.S.No.77 of 2007 on the file District Court, Sivagangai. The appeal was however dismissed for default on 10.06.2008, since the petitioners had not appeared for the arguments. Thereafter, the application for restoring the said appeal was filed with the delay of 2218 days.

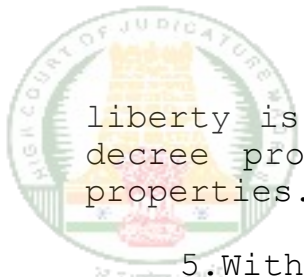
(ii) In the affidavit filed in support of the said petition, the third petitioner/ third defendant had stated that the defendants 1 and 2 are minors and the third defendant could not attend the Court on 10.06.2008 on account of her ill-health and thereafter, she has been continuously ill as a result of which the delay has occurred.

(iii) The respondents had filed the counter denying the said statement and stating that it is absolutely false.

(iv) The application was dismissed by the learned District Judge, Sivagangai, by his order dated 05.04.2017. The learned Judge had clearly observed that the petitioners have not given any reason for the delay and the reason given is also not supported by proof. It is this order that has been challenged in this revision.

3.Heard the learned counsel on either side and perused the records.

4. As rightly pointed out by the learned District Judge, Sivagangai, no reasons whatsoever have been given by the petitioners for the delay except stating that the third defendant was keeping unwell. The further details on the period during which she was unwell supported by proof has not been pleaded and established by the petitioners. It has been time and again emphasised by this Court as well as the Hon'ble Supreme Court that seeking condonation of delay is not matter of right but one to be proved with sufficient cause. In the instant case, the reason given is vague and not supported by proof. Therefore, I do not find any reason to disturb the order passed by the learned District Judge, Sivagangai. <https://hccivildatabase.org/> This Civil Revision Petition is dismissed. However,



liberty is granted to the petitioners to participate in the final decree proceedings to workout their shares in the suit schedule properties.

5. With the above observations, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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,
Sivagangai

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-38937[F] dated 15/12/2021)

C.R.P(MD)No.1907 of 2017 and
C.M.P(MD) No.4163 of 2018
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