



CRP.No.1028 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2022

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**Civil Revision Petition [PD] No.1028 of 2015 &
M.P.Nos.1 & 2 of 2015 & C.M.P.No.10349 of 2020**

1. D.Samundeeswari
2. D.Saravanababu
3. D.Loganathan
4. D.Sankar Ganesh
5. D.Vijayalakshmi
6. D.Gandhimadhi
7. D.Ponmani

... Petitioners/ Appellants

..Vs..

1. A.Panchacharam
- A.Deivasigamani [Deceased]
2. A.Venu
3. Mahalakshmi
4. Jayalakshmi
5. Bagyalakshmi

...Respondents/ Respondents

Prayer: This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the Order dated 07.11.2014 passed in I.A.No.6990 of 2013 in O.S.No.3957 of 2010 on the file of the XI Assistant City Civil Court, Chennai.



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For Petitioners : Ms.Udayaselvi
for P.G.Thiyagee

For R-1 : Mr.P.Braman

For RR3 to 7 : No appearance

ORDER

This Civil Revision Petition has been filed challenging the dismissal of the application filed in I.A.No.6990 of 2013 in O.S.No.3957 of 2010 on the file of the XI Assistant City Civil Court, Chennai, dated 07.11.2014 to condone the delay of 661 days in filing an application to implead the petitioners therein as defendants in the suit.

2. The suit in O.S.No.3957 of 2010 has been filed for declaration and for permanent injunction. The defendants/respondents herein have filed their written statement stating that they are genuine purchasers of the property from its owner. The proposed parties, who are claiming right over the property, have given a false complaint before the Land Grabbing Cell stating that the petitioners are trying to trespass into the property. Hence, the petitioners have filed an application to implead the proposed respondents as defendants in the suit.



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3. Perusal of records shows that the first defendant entered appearance in the suit on notice and he has also engaged an advocate Mr.Balakrishnan and the case was posted for filing of written statement. The first defendant has not filed written statement on 22.02.2010 before the trial Court, as he was passing through his last days of his life and therefore, he was unable to defend the suit and hence, he was set exparte and a preliminary decree was passed on 30.10.2010.

4. After the demise of the first defendant on 17.03.2011, the petitioners received a letter dated 03.12.2011 from the counsel for the plaintiff pertaining to the claim of the plaintiff to 1/6th share. It was then that the petitioners came to know about the suit. The plaintiff is the uncle of the petitioners and when the petitioners asked him about the suit, he promised to withdraw the suit. Believing the plaintiff's words, the petitioners have not taken any steps. On 13.12.2012, the plaintiff's counsel sent yet another notice in I.A.Nos.18909 and 18910 of 2012 for final decree and for appointment of an Advocate Commissioner.



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5. In spite of receiving notice in the above applications on 13.12.2012, the petitioners kept quiet and have not taken any steps to set aside the ex parte preliminary decree. Therefore, finding that the petitioners had kept quiet for years together and have come forward to file this application and finding that there is no sufficient reason to condone the delay, the trial Court held that the application cannot be permitted to be set aside without any reasons and dismissed the application.

6. Heard the learned counsel for both sides and perused the materials adduced before this Court. In the considered opinion of this Court, the trial Court, upon considering all the above facts, has rightly dismissed the application. Hence, I do not find infirmity in the order passed by the trial Court and this Court is not inclined to interfere with the above order of the Court below. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

28.02.2022

Index:yes/no

Internet:yes



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vrc

To:
The XI Assistant Judge,
City Civil Court, Chennai.



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J.NISHA BANU, J.

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