



C.R.P. No. 3275 of 2012

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.3275 of 2012

M.Kesavan,
S/o. Munusamy Kounder

... Petitioner

Vs.

1. Dhanasekar,
S/o. Ethiraj Kounder
2. Selvakumar,
S/o. Ponnukannu Kounder
3. Selvarasu,
S/o. Ponnukannu Kounder
4. Jayakumar,
S/o. Ponnukannu Kounder
5. Umapathy,
S/o. Ponnukannu Kounder

... Respondents



C.R.P. No. 3275 of 2012

PRAYER: Civil Revision Petition filed under Sec.115 of Civil Procedure

Code, praying to set aside the order dated 17.04.2012 passed by the Hon'ble

Principal District Judge in I.A.No.17 of 2010 in A.S.No. 35 of 2006.

For Petitioner : Mr. S.Gurumurthi

For Respondents : Mr.N.Subramani for R1

R2 and R5 – No appearance

R3 and R4 – died

ORDER

Challenging the order passed in I.A.No. 17 of 2010 in A.S.No.35 of 2006 by the learned Principal Subordinate Judge, Tindivanam, the present Civil Revision Petition has been filed.

2. The revision petitioner/appellant herein preferred this Civil Revision Petition stating that in impleading legal heirs of 3rd respondent Selvarasu, there is a delay of 964 days. Due to ill-health and lack of instructions, he was not able to file the application in time. But, the said application was dismissed by the lower appellate court holding that the reason for the delay is not sufficiently explained and not produced any medical proof that he was under illness.



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3. The learned counsel for Revision Petitioner submitted that the lower appellate judge ought to have appreciated the fact that if the delay is condoned, no prejudice would be caused to the respondents for the reason that he has not wantonly evaded the proceedings and only due to illness and lack of instructions, he was not able to file an application to implead the legal heirs of 3rd respondent in time. If he is not given a chance to proceed with the case, his valuable right over the property will be defeated. Hence, he prayed to set aside the findings of the trial court.

4. Heard and considered rival submissions of learned counsel for petitioner as well as respondents and perused the records.

5. Considering submissions of both sides and on perusal of records, it reveals that legal heirs of deceased Selvarasu, 3rd respondent was not impleaded in appeal within time. Accordingly, the application to condone the delay of 964 days was filed by the Revision Petitioner, however, the reason assigned by him that he suffered with jaundice and other illness, but admittedly, there is no proof. On seeing the facts, the suit was filed for the relief of declaration and permanent injunction by the plaintiff Kesavan in O.S.No. 308 of 2000 and the suit was decreed in favour of plaintiff, but the



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defendants denied the plaintiff's right over the property. So, he wanted to prefer appeal, but there is a delay. To adjudicate the issue in respect of declaring his right over the property, the Revision Petitioner is entitled to defend his case and if the chance is not given to him, his valuable right over the property would be defeated and so also his right to defend his case would be affected. Therefore, considering the nature of relief claimed in the suit, this Court is inclined to condone the delay of 964 days on condition that the Revision Petitioner shall pay a cost of Rs.2000/- to the credit of District Legal Services Authority, Tindivanam within a period of two weeks from the date of receipt of copy of this order and on such deposit, the trial court is directed to proceed with the trial and dispose the case within a period of six months thereafter after giving opportunity to both parties. Accordingly, this Civil Revision Petition is allowed. No costs.

07.11.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

Principal District Judge, Tindivanam.

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T.V.THAMILSELVI, J.

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