



C.R.P.(NPD) No.2001 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28/2/2022

C O R A M

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

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a n d

M.P.No.1 of 2015

Ponnusami Nadar (died)

1. Madasundarapandian
2. Nantheeswaran
3. Kamaraj

...

Petitioners

Vs

1. Minor Kanagaselvam
rep. By Maternal Grandfather
Mr.Nachimuthu Gounder
Melanguttaipalaam
Veerasolapuram Village
Kangeyam Taluk.

Subburathinam (died)

2. Thirumalaisami
3. Lakshmiammal
4. Anandasakkarai
5. Manonmani

...

Respondents



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Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 29/1/2015 made in I.A.No.252 of 2004 in O.S.No.189 of 1996 on the file of the District Munsif, Kangayam.

For petitioners	...	Mr.Kanmani Annamalai for Mr.M.Saravanakumar
For respondents	...	Mr.V.Balamurugan for R.1
		Mr.S.Saravanan for Mr.P.Navaneethakrishnan for R.2.
		Mr.C.Mariappan for R.R.4 and 5.

ORDER

This Civil Revision Petition has been filed against the order, dated 29/1/2015, made in I.A.No.252 of 2004 in O.S.No.189 of 1996, on the file of the District Munsif, Kangayam, Tiruppur District.

2. The facts of the case in brief are as follows:-



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The father of the first respondent is the plaintiff in O.S.No.189 of 1996. The petitioners are the defendants 2 to 5 in the suit. The father of the first respondent has filed the suit for the relief of partition as against the petitioner and one Thirumalaisam (sixth defendant in O.S.). The plaintiff filed the suit in order to defeat the lawful right obtained by the petitioners via sale deed regarding the suit property from the first defendant in the suit. The first defendant in the suit is the father of the respondent/plaintiff and the defendants 2 to 6 are the purchasers of the suit property. Though the defendants 2 to 5 have entered appearance through their counsel, they have not filed their written statement. The sixth defendant in the suit alone has filed his written statement and contested the matter. The first petitioner has suffered from jaundice and took treatment for nearly one year and the other petitioners were taking care of him. Subsequently, the first petitioner has suffered paralytic attack and was bed ridden and therefore the petitioners could not prosecute their case. In the meanwhile, for non-filing of written statement, the petitioners were set ex parte on 11/2/1998. Thereafter, suit was disposed of on merits on 26/6/2002.



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3. Being aggrieved, the petitioners/2 to 5 defendants have filed I.A.No.252 of 2004, under Section 5 of Limitation Act, to condone the delay of 69 days in filing the Order 9 Rule 13 of CPC application.

4. Taking into consideration the materials available on record, the learned District Munsif, Kangayam, held that the petitioners have no locus standi to file I.A.No.252 of 2004 on the ground that there was a delay of 69 days in filing the application to set aside the ex parte decree in a contested suit and when other defendants have contested the matter and a decree was passed on merits.

5. Being aggrieved, the petitioners have come before this Court for the relief as stated supra.

6. Heard Mr.Kanmani Annamalai, learned counsel for the petitioners, Mr.V.Balamurugan, learned counsel for the first respondent, Mr.S.Saravanan, learned counsel for the second respondent and Mr.C.Mariappan, learned counsel for the respondents 4 and 5.



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7. Admittedly, the ex parte decree was passed during the pendency of the suit for non filing of written statement. The petitioners have not given proper explanation for the delay of 69 days. Law of limitation is a substantive law and it has definite consequences on the right and obligation of a party to suit. These principles should be adhered and applied depending on the facts and circumstances of the case. Once a valuable right has accrued in favour of one party, as a result of failure of other party to explain delay with cause, it becomes unreasonable to take that right when the delay has happened as a result of negligence. On the basis of oral and documentary evidence adduced by parties, the learned District Munsif, Kangayam has passed the judgment on merits.

8. Therefore, this Court finds no reason to interfere with the findings of the learned District Munsif, Kangayam. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No

mvs.



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J.NISHA BANU, J

mvs.

To

1. The District Munsif, Kangayam.

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