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C.R.P(NPD)No.1866 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM:

Mr. JUSTICE N.SESHASAYEE

C.R.P(NPD)No.1866 of 2020
& CMP.No.11204 of 2020

Manickam (died)
Vellaiyammal @ Amirthavalli (died)

1.Palanivel
2.Moorthy
3.Karthikeyan
4.Kumaresan
5.Pandian (mentally disabled person
Represented by his brother
2nd petitioner Moorthy)
6.Gowri
7.Jeyapal
8.Chelladurai
9.Ramesh

... Petitioners

Vs.

Ammakannu (died)

1.Lakshmi
2.Mohan
3.Maragatham
4.Rajamani
5.Kannan @ Raja Chettiar

Santha (died)

6.Tamilselvi
Respondents

...



PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against fair and decreetal order dated 21-02-2020 made in I.A.No.1 of 2019 in A.S.No.37 of 2017 on the file of Additional District Judge (Fast Track Court) Mettur, Salem District.

For Petitioner	:	Mr.M.Venkadesh Kumar
For R2 & R3	:	Mr.K.M.Anand
For R4 & R5	:	Mr.N.R.P.Ayyanar

ORDER

The legal heirs of some of the defendants in a suit for partition in O.S.No.15 of 2006 on the file of Sub Court, Mettur, are the revision petitioners herein.

2. The facts are :

- The plaintiffs have laid a suit for partition of two items of properties. The defendants admitted the plaintiffs' share as regards one item of property, and as regards the other item, their contention is that it belongs to one of the defendants, and that the plaintiff has no subsisting right to seek partition. This was negated by the trial Court, and the defendants promptly filed first appeal in A.S.No.37 of 2017 before the Additional District (Fast Track) Court, Mettur.



- During the pendency of the appeal, some of the respondents have passed away, and since the legal representatives of the deceased respondents were not impleaded before the appellate Court, the appellate Court chose to dismiss the appeal for default.
- To restore the same, they have taken out an application to restore the appeal and since there was a delay of 536 days in filing a petition to restore the appeal, they have filed an application in I.A.No.1/2019 in A.S.No.37/2017 for condonation of delay. This attempt was defeated, when the first Appellate Court dismissed the application in I.A.No.1/2019 vide its order dated 21.02.2020. The correctness of this order is now challenged in this revision.

3. Heard both sides. It is a partition suit where right to seek partition of one of the items of properties is in serious dispute. Secondly, when the legal representatives are not impleaded, the procedural option available to the Court is only to record abatement of appeal as regards the party who had died, and not to dismiss the suit.

4.Turning to merits, the learned counsel for the revision petitioner submitted the son of the fourth appellant /fourth petitioner has died of



certain illness and that has troubled the entire family. In reply, the learned counsel for the respondents submitted that the petitioners are devising methods to delay the final disposal of the appeal.

5.Taking into consideration the substantial right of the parties involved in the case and the procedural lapse on the part of the first Appellate Court, this Court chooses to allow this revision, and the delay in filing the petition to restore the appeal is condoned, and the order dated 21.02.2020 in I.A.No.1/2019 in A.S.No.37/2017, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

17.03.2022

Index : Yes/No
Internet : Yes / No
Speaking /Non Speaking

Tsg

To

The Judicial Magistrate Court No.1,
Tindivanam.



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N.SESHASAYEE, J.,

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