



C.R.P.No.2549 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.2549 of 2019
and
C.M.P.No. 16792 of 2019

1. M. Rangasamy
2. R. Kandasamy
3. J. Sarojadevi
4. C. Kalamani

.... Petitioners

Vs

Ponnammal

.... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 03.01.2019 made in I.A.No.898 of 2015 in O.S.No.32 of 2012 on the file of the Sub Court, Perundurai, by allowing this Civil Revision Petition.

For Petitioners : Mr. D.Gopal

For Respondent : Mr.M.Guruprasad

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 03.01.2019 made in I.A.No.898 of 2015 in O.S.No.32



C.R.P.No.2549 of 2019

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of 2012 on the file of the Sub Court, Perundurai, by allowing this Civil Revision Petition, thereby dismissing the petition to condone the delay of 1055 days in filing the petition to set aside the ex-parte decree.

2. The petitioners are the defendants 4 to 7 in the suit filed by the respondent for partition. The respondent filed a suit for partition as against her brothers. One of the brother and his family members filed a petition to set aside the ex-parte decree with a delay of 1055 days in filing the petition to set aside the ex-parte decree. Originally, the suit was filed before the District Court at Erode in O.S.No.32 of 2012, subsequently, it was transferred to the Subordinate Court, Perundurai, Erode District. After receipt of suit summons, the petitioner engaged a counsel who failed to file written statement. Therefore, they were set ex-parte and an ex-parte order was passed on 17.09.2012.

3. On the strength of the preliminary decree, the first respondent filed an application to pass final decree in I.A.No.100 of 2014. In the said application, the petitioners, when notice was issued, refused to receive the



C.R.P.No.2549 of 2019

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same. Therefore, the Trial Court treated the refusal as 'sufficient service' and they were set ex-parte in the final decree also. Thereafter, an Advocate Commissioner was appointed. At that juncture, the petitioners filed a petition to set aside the ex-parte decree on 17.09.2012 with a delay of 1055 days in filing the petition to set aside the ex-parte decree.

4. In the affidavit filed in support of the condone delay petition it is stated that the counsel, who was engaged by them committed a mistake of non-filing of the written statement. They preliminarily instructed him to file written statement. Even then, the counsel failed to file written statement in time. Thereafter, the petitioner suffered with Jaundice and as such, there was a delay. Whereas, in the final decree application in I.A.No.100 of 2014, when notice was issued it was returned as 'unclaimed'. Therefore, the Court below treated it as 'sufficient service' and they were set ex-parte. Therefore, it is clear that the petitioners had knowledge about the notice in the final decree application. The said final decree application was filed on 02.10.2013 itself, whereas, the condone delay application was filed on 07.01.2015. The petitioner failed to state sufficient reasons for the huge



C.R.P.No.2549 of 2019

delay of 1055 days in filing the petition to set aside the ex-parte decree.

Therefore, the Court below rightly dismissed the petition.

5. In view of the above, this Court finds no infirmity or illegality in the order dated 03.01.2019 made in I.A.No.898 of 2015 in O.S.No.32 of 2012 on the file of the Sub Court, Perundurai. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

23.12.2022

Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No

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To

The Subordinate Judge,
Perundurai.



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C.R.P.No.2549 of 2019

G.K.ILANTHIRAIYAN.J,

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C.R.P.No.2549 of 2019
and
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23.12.2022