



C.R.P(NPD).No.1282 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.1282 of 2022

Gomathy

... Petitioner

..Vs..

Sellappa Gounder (died)
1.Kuppanna Gounder
2.Rakkianna Gounder
Periya Nachimuthu Gounder (died)
Chinnammal (died)
3.N.Kandasamy Gounder
4.N.Palanisamy
5.N.Thangamuthu
6.Balamani
7.Sundarambal
Chinnammal (died)
8.S.Nachimuthu
Ammani @ P.Chellammal (died)
9.N.Palanisamy
10.P.Karuppasamy
11.S.Eswari
12.N.Muthulakshmi
13.N.Senbagan

... Respondents



C.R.P(NPD).No.1282 of 2022

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 22.01.2021 made in C.M.A.No.1 of 2014 on the file of the I Additional District Court, Tiruppur against I.A.No.98 of 2005 in O.S.No.339 of 1990 on the file of the Subordinate Court, Tiruppur.

For Petitioner : Mr.S.Mukunth

For respondents : Mr.P.Vallappan

ORDER

This Civil Revision Petition has been preferred, challenging the fair and decretal order dated 22.01.2021 made in C.M.A.No.1 of 2014 on the file of the I Additional District Court, Tiruppur against I.A.No.98 of 2005 in O.S.No.339 of 1990 on the file of the Subordinate Court, Tiruppur.

2.The petitioner is the plaintiff and he filed a suit for partition and the suit was dismissed on 20.09.2001 for default. The petitioner has preferred a petition to restore the suit and the same was also dismissed.



C.R.P(NPD).No.1282 of 2022

Aggrieved over that, the revision petitioner has preferred this revision.

3.The learned counsel for the petitioner submitted that the petitioner has filed a petition to restore the suit in time, but the delay is caused only in getting the petition numbered and in the interest of justice, the suit may be restored.

4.On a perusal of the records, it is seen that the suit is of the year 1990 and from the proceedings of the suit, it is seen how the plaintiff was careless in complying the direction of the Court. When the suit was filed, it is seen that there was some deficit in payment of Court fee and an order was passed to pay the same. During that course, one of the defendants namely the 4th defendant died and a petition was filed by the revision petitioner to implead his legal heirs as parties to the suit and that also was allowed. After a long delay in re-presentation at last on 18.11.1997, the consequential amendment petition was filed and the same was also allowed. The petitioner took two years to carry out the



C.R.P(NPD).No.1282 of 2022

amendment.

5.The subsequent difficulty arose in paying batta for sending summons to the newly added parties. Due to default, the suit was dismissed on 20.09.2001 and thereafter, a petition was filed to restore the suit and that was returned for complying certain defects. The same was re-presented after 9 months and even at that point, the defects were not complied and once again, it was re-presented. When the condition is to re-present the same within one month, the petitioner caused further delay in re-presenting the petition and got it numbered. The conduct of the petitioner would show that at every stage he delayed the proceedings.

5.The learned trial Judge has rightly observed that the respondents/defendants suit cannot be put to surprise by restoring the suit, which was dismissed before 15 years. Though this Court normally takes a liberal view to allow the petition to restore the suit dismissed for default, if the intention of the petitioner is patently visible and it is just to



C.R.P(NPD).No.1282 of 2022

drag the proceedings, such attitude cannot be encouraged. I do not find any factual or legal infirmity in the order and there is no reason for interference.

6. Accordingly, the Civil Revision Petition is dismissed and the fair and decreetal dated 22.01.2021 made in C.M.A.No.1 of 2014 on the file of the learned I Additional District Judge, Tiruppur against I.A.No.98 of 2005 in O.S.No.339 of 1990 on the file of the learned Sub Judge, Tiruppur, is hereby confirmed. No Costs.

14.06.2022

vkx

Index:Yes No

Speaking Order:Yes/No

To

1.The I Additional District Judge,
Tiruppur .

5/6



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C.R.P(NPD).No.1282 of 2022

R.N.MANJULA,J.

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2.The Sub Judge,
Tiruppur.

3.The Section Officer,
VR Section, Madras High Court,
Chennai.

C.R.P.(NPD).No.1282 of 2022

14.06.2022