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C.R.P. (NPD) No.2905 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.02.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P. (NPD) No.2905 of 2021

and

C.M.P.No.20906 of 2021

Chinna Kaligowder@ Chinna Kalappa Gowder (Died)

Ravichandran

...Petitioner

Vs.

1.Smt.Mani

2.Savithri

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C to set aside the fair and final order dated 03.02.2021 passed in I.A. No.1 of 2020 in A.S.C.F.R. No.5 of 2020 on the file of the Subordinate Judge, Mettupalayam.

For Petitioner : Mr.P.Veeraraghavan

For Respondent-1 : Mr.K.Govi Ganesan

For Respondent-2 : Mr.S.Sriram



ORDER

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Challenging the dismissal of his application for condoning the delay of 804 days in filing the First Appeal, the second defendant is the petitioner before this Court.

2. The brief facts are as follows:

a) The first respondent/ plaintiff, who is none other than the sister of the revision petitioner, has filed the suit O.S.No.296 of 2005 on the file of the District Munsif cum Judicial Magistrate, Mettupalayam, against the revision petitioner, their father Chinna Kaligowder @ Chinna Kalappagowder who was arrayed as the first defendant and the second respondent herein, who is the third defendant in the Suit for partition.

b) The plaintiff's case was that the suit properties are the ancestral properties, in which, she has a $\frac{1}{4}$ th share. In defence, the revision petitioner and their deceased father had contended that the properties are not ancestral properties, but they are the self-acquired



properties of the first defendant/petitioner. They also contended that the plaintiff was married 20 years ago and the third defendant 15 years ago and were therefore not entitled to any share, since they had been given sufficient jewellery, “Seervarisai” and cash at the time of their marriage. The first defendant had also spent huge sums for conducting the marriages. In the written statement, the first defendant had also stated that he had sold the properties to the second defendant for a valid consideration on 31.08.2005. Therefore, he sought for dismissal of the suit.

3. The third defendant had filed the written statement, claiming a share in the properties whereby adopting the plaintiff's case.

4. The District Munsif-cum-Judicial Magistrate, Mettupalayam, by Judgment and Decree dated 20.09.2017, decreed the suit as prayed for. Challenging the said judgment and decree, the defendants 1 and 2 had filed the First Appeal before the Subordinate



Judge, Mettupalayam. However, the appeal was filed with a delay of 804 days and to condone the same, the defendants had filed I.A. No.1 of 2020. In the affidavit filed in support of the said application, the revision petitioner/ second defendant would contend that, after the decree, the second defendant, viz., the revision petitioner and his father had applied and obtained the copies of the judgment and decree on 13.11.2017 and they had to file the First Appeal on or before 12.12.2017. However, in the meanwhile, the mother of the plaintiff, second and third defendants and the wife of the first defendant, was bed-ridden and she ultimately died on 15.03.2018. Due to the sudden demise of his mother, the first defendant became ill and died on 06.05.2018. Thereafter, the petitioner was suffering from jaundice for over one and half years, therefore he had not contacted his counsel to give instructions to file the appeal. After recovering, he had taken steps to file the appeal however in the interregnum the delay of 804 days had set in. This delay was neither willful nor wanton.

5. The first respondent/ plaintiff had filed a counter, *inter*



alia contending that the suit for partition had been filed as early as in the year 1995. A preliminary decree was passed on 19.03.2012, after full trial and the first respondent/plaintiff had filed a final decree application in I.A.No.603 of 2012. After filing of the final decree application, the petitioner had appeared and filed their counter statement and also filed an appeal in A.S. No.14 of 2013 before the appellate Court. The Appellate Court, by judgment and decree dated 03.04.2014, remanded the suit back for fresh Trial. After Trial, the suit had been decreed on 22.09.2017. The first respondent/plaintiff had also filed an application for passing a final decree in I.A.No.1 of 2019, in which, the respondents had appeared on 25.10.2019. The present application was filed after a period of over two years and two months and the delay has not been explained properly and it appears to be only an attempt to protract the proceedings for many more years. Therefore, she prayed for dismissal of the application. Pending appeal, the first defendant also passed away.

6. The second respondent/third defendant filed her counter



affidavit more or less adopting the defence taken by the first respondent/plaintiff.

7. The learned Sub Judge, Mettupalayam, by her order dated 03.02.2021, dismissed the said application. The learned Judge had observed that the delay was not explained convincingly and no documents had been filed to prove the contentions. The mother had died on 15.03.2018, followed by the death of the father on 06.05.2018, however, the First Appeal had been filed only in the month of January 2020. Therefore, the suit, which has been filed as early as in the year 1995, should not be allowed to be dragged on indefinitely. Hence, the learned Judge had dismissed the said application. Challenging the same, the revision petitioner is before this Court.

8. The learned counsel appearing for the revision petitioner would vehemently contend that he must be given a chance to contest the First Appeal as sufficient reasons have been given in the affidavit filed in support of his application. The learned counsel appearing for



the first respondent/ plaintiff, on the other hand, would submit that, despite obtaining the decree she has not able to enjoy its fruits on account of the conduct of the revision petitioner. He would further submit that the present proceedings is the second round of litigation. Earlier the suit had been decreed, as against which, an appeal has been filed and the matter was remanded back for fresh consideration and even in the second round of litigation, the first respondent/ plaintiff had succeeded, against which, the present appeal has been filed, that too, with the delay of 804 days and the same, if condoned, would cause great prejudice to the first respondent/ plaintiff.

9. Heard the learned counsel appearing on both sides and perused the records.

10. The petitioner herein has stated that he was unable to file the appeal in time on account of the death of his parents and also, on account of his taking treatment for over one and half years for jaundice. However a closer scrutiny of the date would show that the



mother had died on 15.03.2018 and the father had died on 06.05.2018.

The appeal has been filed in the month of January 2020. The affidavit filed in support of I.A.No.1 of 2020 is silent about the period, for which, the petitioner claims to have suffered jaundice. That apart, it is also seen that, when the notice in the final decree proceedings had been received by the plaintiff on 25.06.2019 but the present application for condoning the delay in filing the appeal has been filed much later. No adequate and convincing reasons have been given and therefore, this Court does not deem it necessary to set aside the order passed by the learned Sub Judge, Mettupalayam. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

11. The learned counsel for the revision petitioner, when orders were being pronounced, informed the Court that his father's share has been sold to him and it has been mentioned in the written statement filed by the second defendant. He would therefore submit that this fact has to be taken note of when the allotment is made.



C.R.P. (NPD) No.2905 of 2022

Taking note of this submission, the learned Sub Judge, Mettupalayam shall allot the share of the deceased 1st defendant also to the petitioner in the final decree proceedings. The plaintiff and the 3rd defendant have not objected to the same.

16.02.2022

Index : Yes/No
Speaking Order : Yes / No
srn/ab

To

1. The Subordinate Judge, Mettupalayam.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.



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C.R.P. (NPD) No.2905 of 2021

P.T. ASHA, J,

srn/ab

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16.02.2022