



CRP.No.3125 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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1.Arumugam
2.Sengodan

... Petitioners

Vs.

1.Shankaran
2.Munusamys
3.Senthil

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 04.08.2022 in I.A.SR.No.5113 of 2022 in O.S.No.140 of 2015 on the file of the Subordinate Judge, Sankari and allow this revision petition.

For Petitioners : Mr.K.S.Raju



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ORDER

This revision petition is filed challenging the order passed by the Court below dismissing the petition to condone the delay of 2317 days in filing a petition to set aside the exparte decree.

2. The respondents herein filed a suit for partition and an exparte decree was passed on 15.02.2016. Subsequently, the petitioners have filed a petition to set aside the exparte decree on 20.07.2022. They also filed a petition to condone the delay of 2317 days in filing a petition to set aside the exparte decree. In the affidavit filed in support of the petition to condone the delay, the first petitioner averred that he was uneducated and he did not know the Court procedure and hence, he could not appear before the Court below on the date fixed for his appearance. It was also averred that, for the past 3 years, he had been taking Ayurveda treatment at Kerala and he returned to his native place only the day before filing of the petition to set aside the exparte decree.



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3. The Court below after perusal of the affidavit, dismissed this petition even without numbering. In the impugned order, the Court below observed that the exparte preliminary decree was passed on 15.02.2016 and thereafter, the respondent filed a petition for passing of final decree. The petitioners herein appeared in the final decree proceedings in person and took time for filing counter. But however, they failed to file a counter. Subsequently, the Advocate Commissioner was appointed to suggest the modes of division and he visited the suit property, after serving notice to both the parties. The Advocate Commissioner in his report clearly mentioned that the first petitioner herein namely, Arumugam was present, when he inspected the suit property. Therefore, finding no merits, the Court below dismissed the condone delay petition.

4. In the affidavit filed in support of the condone delay petition, the first petitioner averred that he had been taking treatment for the past three years from 2016 to 2018. Absolutely, there is no acceptable materials to substantiate said plea raised in his affidavit.



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S.SOUNTHAR, J.

dna

5. From the impugned order, it is clearly seen that the petitioners appeared in final decree proceedings in the year 2017 itself. Therefore, the reason given by the petitioners as if first petitioner had been suffering from some kind of illness and he had been taking Ayurveda treatment in Kerala etc., cannot be accepted as a sufficient cause under Section 5 of the Limitation Act. I do not find any illegality or irregularity in the impugned order passed by the Court below.

6. Hence, this Civil Revision Petition is dismissed. No costs.

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Index : Yes / No

Internet : Yes / No

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To

The Subordinate Judge, Sankari.

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