



C.R.P. No. 2599 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.2599 of 2017
and
C.M.P. No. 12387 of 2017

1. Papathi @ Palaniammal,
W/o. Late P.Ramasamy

2. Gunaeskaran,
S/o. Ramasamy

... Petitioners

Vs.

1. Palanivel,
S/o. Ramasamy

2. Chinnasamy,
S/o. Perumal Gounder

3. Rangasamy,
S/o. Palani Gounder

4. Kannammal,
W/o. Ramasamy

5. Sasikala,
D/o. Ramasamy

... Respondents



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PRAYER: Civil Revision Petition filed under Sec.115 of Civil Procedure

Code, praying to set aside the fair and decreetal order dated 25.01.2017 passed in I.A.No.22 of 2016 in O.S.No. 123 of 2010 on the file of Subordinate Judge's Court at Tiruchengode.

For Petitioners : Mr. T.L.Thirumalaisamy

For Respondents : Mr.M.S.Palaniswamy for R1 to R5

ORDER

The revision petitioners herein are the defendants in the suit in O.S.No.123 of 2010, on the file of District Munsif, Tiruchengode filed by the plaintiffs for the relief of declaration of title and delivery of possession of the suit property.

2. The defendants remained exparte and accordingly, exparte decree was passed on 04.02.2011. But, they were not known about the proceedings and only on receipt of notice from the Execution Court in E.P.No. 333 of 2014, the defendants came to know about the said proceedings. Immediately, they have taken steps to file an application seeking to set aside the exparte decree with the delay of 1339 days, in which, they have



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submitted that the 2nd defendant met with an accident. Hence, he was not able to give instructions to his advocate office, however, the delay was occurred. The said application was strongly objected by the plaintiffs stating that no medical certificate was produced by them and the reason for the delay was also not properly explained. Considering submissions of both sides, the trial court dismissed the application stating that reasons stated by the defendants for the delay is not acceptable one.

3. Challenging the said findings, the defendants filed this Civil Revision Petition. At the time of argument, the learned counsel for respondents submitted that to prove the sickness, the 2nd defendant ought to have filed the discharge summary, but the same was not produced before the trial court. However, he has filed a medical certificate for a particular period and not for 1339 days. Moreover, the petitioners are mother and son, against whom, the plaintiffs filed a suit for declaration and delivery of possession in respect of suit property. But, the submissions of defendants is that it is only money transaction and they are the absolute owners of the property. So, the title of the property is to be decided only on hearing the submissions of



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defendants. Therefore, in order to give a fair chance to prove their defence before the fact finding court, this Court is inclined to condone the delay of 1339 days in I.A.No.22 of 2016 on the file of Sub-Judge, Tiruchengode. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

07.11.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp
To

Sub-Judge,
Tiruchengode.



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T.V.THAMILSELVI, J.

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