



CRP (NPD) No. 4046 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (NPD) No. 4046 of 2018

Alamelu (died)

1. Ayyanar
2. Murugan ... Petitioner/1st Defendant/petitioner

Vs

1. Nallammal
2. Rajakumari
3. Muniappan
4. Malar
5. Sugamathi ... Respondents 1-5/Respondents/Plaintiffs
6. Chandra

7. Kothampoo @ Kalaiselvi ... Respondents 6 & 7/Respondents/Defendants
2 & 3

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 23.01.2015 made in



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I.A.No. 24 of 2014 in O.S.No. 136 of 2010 on the file of the Subordinate Judge, Attur.

For Petitioners : M/s. L.Mouli
for M/s. Zeenath Begum

For RR 1 to 5 : M/s. A.Rajakumar

ORDER

This Revision petition has been filed questioning an order dated 23.01.2015 in I.A.No. 24 of 2014 in O.S.No. 136 of 2010 which suit is now pending on the file of the Sub Court, Attur.

2. The first defendant in the said suit is the revision petitioner herein. Pending the revision petition, she died and her legal representatives have been brought on record.

3. O.S.No. 136 of 2010 had been filed seeking partition and separate possession of the properties mentioned in the schedule to the said plaint. The plaintiffs claimed partition and separate possession of 5/7th undivided share of the said properties. It is claimed by the plaintiffs that the



properties originally belong to Annamalai Padayachi, who died on 10.04.1978 and that thereafter, by way of succession, the property devolved on to his second wife Nallammal, who is the first plaintiff and naturally also to her son and daughters, who are the other plaintiffs. The defendants are their daughters of Sellammal, the first wife of Annamalai Padayachi, she had died in the year 1990. In the said suit, the petitioner herein/first defendant filed I.A.No. 24 of 2014 seeking to condone the delay of 438 days in filing application to set aside exparte order dated 15.12.2012.

4. It is the grievance of the learned counsel for the respondents herein/the plaintiffs in the suit that in the said affidavit filed in support of the said application , the revision petitioner had not explained the reason for the delay of 438 days and that the reasons stated are also not acceptable.

5. The learned Sub Judge appears to have also taken the same view and had rejected the said application stating that acceptable reasons have not been given to explain the delay of 438 days and had also rejected the reasons given.



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6. The reasons given were that the petitioner herein / first defendant she had approached the respondents/plaintiffs about the institution of the suit and had claimed that she was the beneficiary of a settlement deed executed by her mother/Shellammal, whose authority to execute such settlement deed was through a will executed by the original owner Annamalai Padayachi.

7. It is claimed that both the settlement deed and the will are registered documents. It is the claim of the revision petitioner that when she produced these documents to the respondents/plaintiffs they assured her that they would withdraw the suit and therefore, she kept quiet and did not participate in the suit proceeding but later an exparte order was passed and after it came to her knowledge, she filed an application to set aside the exparte order with a delay of 438 days. That application having been dismissed, she had come before this Court by filing the present revision.



8. As stated in the earlier part of the order, she had died pending the revision and her legal representatives have been brought on record.

9. Heard the learned counsel for the petitioner and also the learned counsel for the respondent.

10. It is stated by the learned counsel for the petitioner that these two documents, namely, the registered will of Annamalai Padayachi and the registered settlement deed executed by Shellammal in favour of the petitioner/Alamelu, if considered by the Court, would give a complete turn around over the view taken in the suit for partition and since the genuinity of the said documents have not been assailed by the respondents/plaintiffs, an obligation is placed on the learned Judge to examine the said two documents. Learned counsel stated that in the affidavit filed to condone the delay, necessary pleadings have been given with respect to the said documents.

11. Unfortunately, in the order now under revision, the learned



Judge appears to have skirted that particular issue and had not addressed the fact that a will had been executed by Annamalai Padayachi and the beneficiary under the Will, Shellammal / first wife had executed a settlement deed in favour of the revision petitioner.

12. That is the central issue which should have been addressed by the learned Sub Judge. The learned Sub Judge had considered the reasons for the delay given and had rejected the said reasons but some opinion should have been given on both the will and the settlement deed which are both registered documents.

13. I would therefore interfere with the order passed and set aside the order and remit the matter back to the Sub Court, Attur, Salem District, with a request to rehear the said Interlocutory Application in I.A.No. 24 of 2014 and render a considered order, also with respect to the averments regarding the Will and Settlement Deed. If the respondents herein are of the opinion that a better counter would have to be filed questioning the legality of the said documents, opportunity may be granted to them to file necessary



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counter. Thereafter, let order be passed by the learned Sub Judge, Attur, in

IA.No. 24 of 2014.

14. It must be kept in mind by the learned Subordinate Judge that these two documents have not been mentioned in the plaint. Let all these factors be balanced and a considered order be passed.

15. The matter is remitted back to the learned Sub Court, Attur, with a direction to pass necessary orders keeping in mind the observations aforementioned.

16. Accordingly, this Civil Revision Petition is allowed. No costs.

07.02.2022

vsg

Index: Yes/No

Speaking order / Non speaking order

C.V.KARTHIKEYAN, J.

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To:

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

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