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CRP.No.4131 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

CORAM:

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

C.R.P.No. 4131 of 2018

and

CMP.No.22767 of 2018

1. Dhanasekar
2. Moorthy,
Petitioners

..

Versus

1. Saraswathi
2. Ramu
3. Loganathan
4. The Sub-Registrar,
Walajah Sub Registrar Office,
Walajah.
...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 23.10.2018 made in I.A.No.99 of 2017 in A.S.No. Nil of 2017 on the file of learned Principal District Judge, Vellore.

For Petitioners : Mr.M.K. Hidayatullah

For Respondents : No Appearance for R1 to R3

: Mr. B. Tamilnidhi for R4

(Additional Government Pleader)



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ORDER

This Civil Revision Petition has been filed by the petitioner herein seeking to set aside the fair and decretal order dated 23.10.2018 made in I.A.No.99 of 2017 in A.S.No. Nil of 2017 on the file of learned Principal District Judge, Vellore.

2. The petitioners 1 and 2 herein are the defendants 2 and 3 and the respondents herein 1 and 2 are the plaintiffs in the original suit.

3. For the sake of convenience, the parties are referred to as per the rank cited in the Original suit.

4. The case of the petitioners is that the plaintiffs/respondents 1 and 2 herein have filed a suit in O.S.No.17 of 2009 before the Sub-Ordinate Judge, at Ranipet seeking for partition and separate possession. The Trial Court dismissed the said suit by its Judgment and decree dated 12.12.2014. The plaintiffs/ respondents 1 and 2 herein have not filed appeal within a period of limitation as prescribed by Law due to the 1st respondent was



bedridden affecting from Jaundice and after recovering from Jaundice, the plaintiffs/respondents 1 and 2 herein have filed an application in I.A. No.99 of 2017 in A.S. No. Nil of 2017 for condonation of delay of 787 days before the Principal District Judge, Vellore. After hearing both sides, the Principal District Judge allowed the aforesaid application with cost of Rs.5,000/- payable to the respondents 2 and 3 therein/petitioners herein by its order dated 23.12.2018. Thereafter, the said First Appeal has been numbered as A.S. No.30 of 2018. Being aggrieved by the aforesaid order dated 23.12.2018, the respondents 2 and 3/petitioners herein have filed the present Civil Revision Petition to set aside the same.

4. The learned counsel for the petitioners would submit that even though the Court below has rightly observed that the plaintiffs/ respondents 1 and 2 herein have not given any valid reasons for filing of condonation application of 787 huge delays, however, the said application was allowed on payment of Rs.5,000/- to the petitioners herein in stead of dismissing the same.



5. It has been further submitted that while the 1st respondent being a Railway employee who attended her office without taking any leave, the reasons stated by plaintiffs/the respondents 1 and 2 herein are not acceptable as the 1st plaintiff/1st respondent herein was bedridden due to suffering from Jaundice and hence, they could not file an appeal within a period of limitation. While being so, the Court below ought to have held that in the absence of substantial supporting documentary materials and evidence like medical certificate, medical prescription, deposition from the person who treated the jaundice patient etc., which is the duty of the applicants to produce, there was no room or justification to condone the huge and exorbitant unexplained delay of 787 days as per the law laid down by the Madhya Pradesh High Court reported in “*AIR 1995 Madhya Pradesh 16*”. Hence, the order dated 23.10.2018 passed by the Trial Court in I.A. No.99 of 2017 in A.S. No.30 of 2018 is liable to be set aside.

6. Heard the learned counsel for the petitioners and perused the materials available on record. There is no representation for the respondents 1 to 3. The learned Government Advocate represented for 4th respondent herein.



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7. On a perusal of the records, it is seen that the Court below, after considering the facts and circumstances of the case and submissions of the learned counsel for both parties as well as relying on the Judgment dated 08.04.2010 of this Court in CRP (NPD) No.3785 of 2008, allowed the application in I.A. No.99 of 2017 on payment of Rs.5,000/- to the petitioners herein with the intention to offer a chance to the petitioners/1st and 2nd respondents herein/plaintiffs to file appeal enabling them to prove their side. Since the dispute between the family members in the suit schedule property, the respondents 1 and 2 herein/plaintiffs filed the suit in O.S. No.17 of 2009 seeking for partition and separate possession of 2/3 shares in the suit property and permanent injunction before the Sub-Court, Ranipet, against the defendants/petitioners herein. Under such circumstances, the plaintiffs are given one more chance to establish their right over the suit property. However, considering the huge delay of 737 days and due to inconvenience caused to the defendants/petitioners herein, the respondents 1 and 2 are hereby directed to pay Rs.10,000/- to the petitioners herein within a period of two weeks from the date of receipt of copy of this order. Since the First Appeal is of the year 2018, the Court

**T.V.THAMILSELVI, J.**

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below is hereby directed to dispose of the same within a period of three months from the date of receipt of copy of this order.

9. With the aforesaid direction, the Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed if any. No Costs.

01.11.2022

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Index : Yes/No

Speaking Order : Yes/No
To

1. The Principal District Judge, Vellore.
2. The Section Officer, V.R.Section
High Court, Madras.

C.R.P.No. 4131 of 2018
and
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