



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P (MD)No.518 of 2018

and

C.M.P (MD)No.2265 of 2018

1.Venkatasamy
2.Varadharajan

... Petitioners/
Petitioners 1 &2/Appellants
Vs.

1.Krishnan
2.Aathimoolam
3.Pushpam

... Respondents/Respondents 1,2 & 3
Respondents 1,2 & 3

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the fair and decretal order passed in I.A.No.67 of 2016 in unnumbered A.S. in G.L.No.4078, dated, 14.03.2016 on the file of the Principal District Court, Tirunelveli, dated, 19.09.2017.

For Petitioners : Mr.T.Selvan
For Respondents : Mr.S.S.Thesigan
for Mr.S.Navamani
for R1
No appearance
for R2 & R3

ORDER

The defendants 3 and 4 in O.S.No.37 of 2010 are the revision petitioners.

2. The first respondent herein had filed O.S.No.37 of 2010 before Sub-Court, Ambasamudram for the relief of partition and separate possession of his share. The suit was decreed on 18.02.2015. The defendants 3 and 4 in the suit have filed first appeal on 14.03.2016 before Principal District Court, Tirunelveli. In order to condone the delay of 337 days, the appellants had filed I.A.No.67 of 2016. In the said condone delay application, the appellants had stated that they were suffering from Jaundice and hence, they could not contact their counsel for filing first appeal. The plaintiff/respondent in the appeal had filed a counter and



disputed the reasons stated for condoning the delay. The first appellate Court after considering the averments in the affidavit and the counter affidavit, had dismissed the condone delay application. As against the same, the present revision petition has been filed.

3. Heard the learned counsels appearing on either side.

4. Admittedly, the defendants 3 and 4/revision petitioners have suffered a decree on 18.02.2015. The plaintiff in the suit had filed I.A.No.457/2015 for passing a final decree. In the said application, the defendants have been served and they have filed their Vakalat on 07.03.2015. The defendants have also filed their counter in the final decree application on 12.01.2016. The contention of the defendants 3 and 4/appellants is that they were suffering from Jaundice and hence, they could not contact their counsel. They have contacted their counsel and filed their Vakalat as early as on 07.03.2015 for the final decree proceedings. Nearly one year, thereafter, they have filed the first appeal on 14.03.2016. The reasons stated in the affidavit to condone the delay have been falsified by the participation of the defendants in the final decree proceedings. The first appellate Court has rightly dismissed the application to condone the delay on the ground that the application has been filed on false grounds.

5. I do not find any illegality or irregularity in the order. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Principal District Judge,
Tirunelveli,



2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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MGJ(10.06.2022) 3P 4C