



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S. ANANTHI

CRP(MD).No. 2616 and 2617 of 2017 and

CMP(MD).Nos.12046, 12047 of 2017 and 5087 of 2019

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Pandi

.. petitioner/Petitioner/

1st Defendant in both CRPs

Vs.

1.Meenachiammal

2.Karuppaiye

3.Pandiammal

.. Respondents/Respondents/

Plaintiffs in both CRPs

Common Prayer: This Civil Revision Petition is filed under Section 115 CPC against the fair and decreetal order dated 21.09.2017 in I.A.Nos. 124 and 122 of 2017 in O.S.No.569 of 2011 on the file of the III Additional Subordinate Court, Camp at Usilampatti, Madurai.

For Petitioner in both CRPs ... Mr.B. Sekar

For respondents in both CRPs ... Mr. N. Vallinayagam,

COMMON ORDER

The revision petitioner / 1st defendant filed these revisions to set aside the order passed in I.A.Nos. 124 and 122 of 2017 in O.S.No.569 of 2011 on the file of the III Additional Subordinate Court, Camp at Usilampatti, Madurai.

2. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

3. The petitioner / 1st defendant has filed an application I.A.No.122 of 2017 to condone the delay of 1446 days in filing an application to set aside the ex parte pre decree passed in O.S.No.569 of 2011 on the file of the III Additional Subordinate Court, Camp at Usilampatti, Madurai and the application in I.A.No.124 of 2017 filed to set aside the final decree passed in the said suit.

3. The petitioner in both the applications filed these revisions on the ground that his counsel entrusted the case and he has also believed that his counsel filed written statement, but, only after inspection of the Commissioner, the petitioner came to know the passing of pre-decree and final decree and hence, he has filed these revisions.

4. On perusal of the records it is seen that the delay is 1446 days and also not properly explained. But the suit is for partition the respondents / plaintiffs admitted the defendant's share in the suit property. Further, the petitioner contended that



he purchased the property from the co-sharer and already partition was effected. Since the share of the petitioner is admitted by the plaintiff, the petitioner / 1st defendant is necessary to decide the issue.

5. The counsel for the respondents / plaintiffs vigorously argued and contended that the delay should not be condoned since there is no proper reason. He has also relied on the Judgment of this Court reported in **2020(1) CTC 377 (C. Ravi Vs. Sulochana and another)**, wherein at para 19 it has been held as follows:

"19. Considering the facts and circumstances, the petitioner has not made out a ground to condone the enormous delay of 668 days, as the reasons furnished are neither cogent nor convincing. The petitioner could not establish that the huge delay occurred on account of certain genuine reasons. In the absence of any bona fide or proof, the Court cannot exercise its discretional powers so as to condone the enormous delay of 668 days."

He would further submit that since the share of the parties to be decided in the partition suit one opportunity to be given to the petitioner. But, the huge delay may be condoned with cost.

6. Considering that fact that this is a partition suit and that the share of the parties to be decided in the suit, this Court is inclined to allow these revisions with a cost of Rs.15,000/- to the respondent.

7. Accordingly, these Civil Revision Petitions are allowed and the order passed in I.A.Nos. 124 and 122 of 2017 in O.S.No.569 of 2011 on the file of the III Additional Subordinate Court, Camp at Usilampatti, Madurai are set aside. The petitioner is directed to pay a sum of Rs.15,000/- to the respondents / plaintiffs on or before 21.03.2022, failing which these Civil Revision Petitions shall stand dismissed automatically. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

trp



To

III Additional Subordinate Court, Camp at Usilampatti, Madurai.

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The sub Assistant Registrar(A.E),
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.VALLINAYAGAM, Advocate (SR-9671[F] dated
03/03/2022)

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