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C.R.P. No. 289 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 289 of 2022

- 1.Yellamma @ Chinna Ammaiah
- 2.Jeyamma
- 3.Aswathamma
- 4.Indiraniyamma @ Indirani

... Petitioners

Vs

- 1.Muniyamma
- 2.Pillakka @ Pillamma
- 3.Venkatesappa
- 4.Yellappa
- 5.Venakatalakshmiyamma
- 6.Renuka
- 7.Muniraj @ Narendra
- 8.Kiran
- 9.Chinnathimakka
- 10.Ramaiah
- 11.Gajendra
- 12.Renuka
- 13.Saraswathi
- 14.Minor.Pushpa
D/o.Gajendra
- 15.Minor.Asha
D/o.Gajendra
- 16.Manjuathareddy
- 17.R.S.Veena
- 18.N.Manjunatha Reddy

... Respondents



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PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, praying to set aside the fair and decreetal order passed in I.A.No.01 of 2019 in O.S.No.26 of 2012 dated 06.01.2022 on the file of the Principal Subordinate Court, Hosur.

For Petitioners : Mr.R.Jayaprakash

For Respondents :

R16 to R18 : Mr.T.Raghavan

R1,9 & 10 : Deceased

others : Ex-parte

ORDER

The petitioners who are the plaintiffs have preferred this revision against the order passed in I.A.1 of 2019 in O.S.No.26 of 2012, dated 06.01.2022 by the learned Principal Subordinate Judge, Hosur.

2.The Plaintiffs have filed a suit for partition claiming their share against the defendants / brothers who are the respondents herein. The respondents 1 to 15 remained ex-parte before the trial Court. The respondents 16, 17, and 18, who are the purchasers, are contesting the suit by filing written statements.



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3. Notice has been served. Mr.T.Raghavan, learned counsel entered appearance on behalf of the respondents 16, 17 & 18. The respondents R1, R9 & R10 have died.

4. When the suit was posted for trial on 05.03.2018, the 4th plaintiff was not able to appear before the trial Court. Due to the ill-health, she was admitted for an emergent operation. Due to her absence, the suit was dismissed for default and she was set as ex-parte. After recovery, she came to know about the dismissal of the suit. Thereafter, the 4th plaintiff filed an application for restoration with delay of 150 days and also filed an application to condone the delay. The respondents had not raised any objection. Therefore, the trial Court condoned the delay. The suit was ripe for trial from the year 2013, and the same was listed in the year 2018. For non commencement of trial, the suit was dismissed for default on 05.03.2018. Challenging the said proceedings the present revision has been filed.

5. Heard both sides and perused records.



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6. The learned counsel for the petitioner submits that the plaintiffs are sisters, who are aged more than 60 years, filed the suit against the brother's joint property. In the suit proceedings, there was absolutely no delay on their part which was wanton, but the learned trial Judge erroneously dismissed the suit and hence, he prayed to set aside the findings in I.A.No.1 of 2019.

7. The learned counsel for the respondents contended that the plaintiffs were not inclined to proceed with the trial but they dragged on the proceeding purposely, by absenting themselves on that day.

8. The plaintiffs are aged more than 60 years and they filed the suit in the year 2013, for partition. Since trial was not commenced at the hands of the plaintiffs, the matter was posted on 05.03.2018 and due to non-appearance of the plaintiffs, the suit was dismissed for default. After the dismissal of the suit for default, immediately after 5 months, they have taken steps to restore the suit. Since they are aged old ladies, they have not followed the suit proceedings. Hence, they absented on the day. It shows



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that absence on that day was not willful, though the reason has not been clarified.

9. However, considering the facts of the case and conduct of the parties, the parties are to be given an opportunity to prove their claim over the property with a valid right. Hence, finding of the learned trial Judge in I.A.No. 1 of 2019 is set aside, and this Revision Petition is allowed.

10. The petitioners are directed to file an application before the learned trial Judge to restore the suit. The learned Judge is directed to decide the suit on merits and dispose of the case, within a period of 6 months from the date of receipt of a copy of this order.

20.03.2023

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rri

T.V.THAMILSELVI, J.



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rri

To

1. The Principal Subordinate Court, Hosur.

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