



C.R.P.No.1781 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1781 of 2019

and

CMP.No.11652 of 2019

Ravi

.. Petitioner

Vs.

1.Anjalai

Elumalai (Died)

2.Rani

3.Vishalakshi

.. Respondents

PRAYER: Civil Revision Petition is filed under section 115 of Civil Procedure Code, to set aside the Order and Decreetal, dated 13.11.2018 passed in I.A.No.1887 of 2017 in I.A.No.1937 of 2011 in O.S.No.344 of 2008 by the Learned District Munsif, Madurantakkam.

For Petitioner : Mr.N.Nagu Sah

For Respondents : No Appearance for R1 and R3
: Not Ready in Notice for R2



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ORDER

This is an application filed to condone the delay of 851 days in filing the application to set aside the *ex-parte* decree in I.A.No.1937 of 2011 in O.S.No.344 of 2008, dated 30.04.2014.

2. O.S.No.344 of 2008 is a suit for partition filed by the 1st respondent as against her father and siblings. In the said suit, she claimed 1/5th share in the suit property. A preliminary decree came to be passed on 08.07.2010.

3. In order to convert the preliminary decree to an executable final decree, an application was filed in I.A.No.1937 of 2011. In the said application, all the respondents were set *ex-parte*. A final decree came to be passed on 30.04.2014. To condone the delay in filing the application to set aside the *ex-parte* final decree, the Civil Revision Petitioner filed I.A.No.1887 of 2017. In this application, he had taken two defences, namely, the father had settled his share in his name and also that he was not served with any summons.



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4. The Court examined the later plea and came to a conclusion that summons were in fact served on the petitioner and therefore, rejected the application. However, I am inclined to consider the application to condone the delay because even prior to the presentation of the plaint, the 2nd defendant/Civil Revision Petitioner has pleaded that the father had settled the property in his favour on 05.12.2007. If the father's 1/5th share is settled in the favour of the 2nd defendant, instead of getting 1/5th share, his share will be enlarged to 2/5th share.

5. Therefore, considering the above circumstances, in the light of plea in the variations in the share of the defendant, I am inclined to condone the delay of 851 days. However, I have to take note of the fact that his sister has been constrained to contest the proceedings for over a period of 13 years. Consequently, to balance the interests of his sister also, I condone the delay of 851 days on the condition that the petitioner pays to the 1st respondent a sum of Rs.10,000/- (Rupees ten thousand only) within a period of eight (8) weeks from date of receipt of a copy of the Order.



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6. In case, the sum is paid, delay shall be condoned. Thereafter, the learned District Munsif, Madurantakkam is requested to take up the application under Order 9 Rule 13 and allow the same. The petitioner thereafter is permitted to file an application for passing of further preliminary decree enlarging the share from 1/5th to 2/5th on the basis of the settlement deed executed by his father on 05.12.2007.

7. It is made clear that if the cost is not paid, within the time specified, the Civil Revision Petition will stand dismissed without further notice to this Court.

8. Therefore, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.09.2023

Index: Yes/No
Speaking Order : Yes/No
Neutral Citation: Yes/No
MKN2/VEDA

To
The District Munsif, Madurantakkam.

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V.LAKSHMINARAYANAN,J.

MKN2/VEDA

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