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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

CRP.No.810 of 2023
and C.M.P.No.6179 of 2023

1. Selvi
2. Sathish
3. Vaishnavi ... Petitioners

Vs.

1. Mangai
2. Mayanci
3. Saroja
4. Rajeswari
5. Srimathi
6. Boopathi ... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the order dated 12.01.2023 passed in I.A.No.2 of 2021 in O.S.No.28 of 2014 on the file of the Sub Court, Tirupattur, Vellore District, by allowing the Civil Revision Petition and allow the said I.A filed for condoning the delay.

For Petitioners : Mr.P.Valliappan,
Senior Counsel
For Mr.J.Jayabalan

For Respondents : Mr.R.Rajarajan

ORDER

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Challenging the impugned order dated 12.01.2023 passed in I.A.No.2 of 2021 in O.S.No.28 of 2014 on the file of the learned Subordinate Judge, Tirupattur, Vellore District, the defendants 1 to 3 preferred this Civil Revision Petition.

2. The learned counsel appearing for the petitioners submits that these petitioners are shown as defendants 1 to 3 in the suit in O.S.No.24 of 2014 filed by the plaintiffs/respondents herein for claiming partition of nine share and prayed to allot five shares to them. These petitioners are the legal heir to one Narayanasamy, who is the brother of the plaintiffs 1 & 2. The plaintiffs contended that the properties are joint family property.

3. The notice was served on the defendants and they appeared through counsel and also filed their written statement. Thereafter, the case was posted for trial on 16.02.2016 for cross-examination of P.W.1. Due to lack of communication, they were not appeared. Hence exparte decree was passed on 05.10.2017. Now on receipt of final decree notice in I.A.No.633 of 2017, they came to know about the exparte decree. Thereafter, they filed application to set aside the exparte decree for which, there is a delay of 1233 days. To condone the said delay, they filed the present application in I.A.No.2 of 2021 before the

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trial Court.

4. The respondents/plaintiffs filed objection stating that the petitioners have known about the proceedings and all these years nearly five years, they were kept silent and after initiation taken by them to pass final decree, this application was filed without showing proper reasons for the said delay. More over, the illness stated by the defendants was not proved in support of with any medical proof. Considering both submission, the trial Judge dismissed the said petition stating that the delay has not been properly explained.

5. The learned counsel appearing for the petitioners submits that the revision petitioners are the legal heirs of one deceased Narayanasamy who is the brother of the plaintiffs 1 & 2 and they were having valid defence in respect of the property. Further more, there is a decree passed in O.S.No.283 of 1994 wherein all the properties were divided and those facts were also mentioned in the plaint itself. If the opportunity is not given, these petitioners right over the property will be defeated.

6. By way of reply, the learned counsel appearing for the

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respondents submits that these petitioner were very well known about the suit proceedings and purposely they evaded the same and even after filing the final decree proceedings, they were not filed application in time and the trial Judge rightly appreciated the evidence, which needs no interference.

7. Considering the both submission the fact reveals that already with regard to the suit property as well as the claim of the parties, there was a decree passed in O.S.No.283 of 1994 and in that decree, the husband of the first petition is one of the parties. However, these plaintiffs were not parties to the said proceedings. Hence they prayed for declaration to declare the decree passed in O.S.No.283 of 1994 as null and void.

8. If an opportunity is not given to the petitioners/defendants 1-3 to prove their case, their valid right in respect of the property will be defeated. Further on seeing the affidavit filed by the petitioners to condone the delay, the reason assigned by them is illness more particularly smallpox and jaundice. Except this, they have not assigned any reasons. But in the partition suit all the parties are deemed as plaintiffs and each of their right has to be decided otherwise their right over the property will be defeated. Though the reason assigned by them was not accepted, considering the nature of the claim made

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by the parties, this Court is inclined to set aside the findings rendered by the trial Judge by allowing the said application with cost.

9. Accordingly, the impugned order dated 12.01.2023 passed in I.A.No.2 of 2021 in O.S.No.28 of 2014 on the file of the learned Subordinate Judge, Tirupattur, Vellore District, is hereby set aside on condition that the petitioners shall pay cost of Rs.5,000/- (Rupees five thousand only) to the respondents/plaintiffs within a period of two weeks from the date of receipt of a copy of this Order. The trial Court is directed to proceed with the trial as expeditiously as possible.

10. With the above directions, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

28.03.2023

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order

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T.V.THAMILSELVI, J.

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To

The Subordinate Judge,
Tirupattur,
Vellore District.

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