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C.R.P.No.4572 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.4572 of 2023

and

C.M.P.No.27380 of 2023

Mari Naicker (deceased)

1. Rukmani
2. Chellappan
3. Vedagiri
4. Murugesan
5. Elumalai
6. Kala
7. Rajeswari
8. Saraswathy
9. Salsa

... Petitioners

-Vs-

Padavettammal

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order of the learned Principal District Judge of Kancheepuram at Chengalpattu dated 29.09.2021 in I.A.No.2 of 2019 in O.S.No.84 of 2014 and allow the above C.R.P.



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For Petitioner

: Mr.B.Bharath Kumar for

Mr. V.Nicholas

ORDER

Challenging the impugned order passed in I.A.No.2 of 2019 in O.S.No.84 of 2014 passed by the learned Principal District Judge, Kancheepuram at Chengalpattu, the Revision Petitioners preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondent is dispensed with.

3. Before the trial court, the original defendant filed an application to condone the delay of 1153 days in filing the application to set aside the exparte preliminary decree passed against him and the same was dismissed by the trial judge for the reason that no proper reason was assigned for the delay. Aggrieved over the same, the Revision Petitioners preferred this Civil Revision Petition.



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4. The learned counsel for Revision Petitioners would submit that the original defendant is the brother of plaintiff, however, due to ill-health and lack of communication, he was not able to follow the proceedings. But, his contentions was not considered by the trial judge and erroneously dismissed the application. Hence, they prayed to set aside the findings of trial judge.

5. Admittedly, the issue is pending between brothers and if sufficient opportunity is not given to the legal heirs of defendant, their valuable right to defend the case will be defeated. Therefore, in order to give one more opportunity and to avoid multiplicity of proceedings and though the delay is not properly explained, this Court is inclined to set aside the findings of trial judge in I.A.No.2 of 2019 in O.S.No. 84 of 2014 on condition that the Revision Petitioner is directed to pay a sum of Rs.25,000/- towards cost to the respondent within a period of three months from the date of receipt of copy of this order and on such payment, the trial judge is directed to complete the trial and dispose the case within a period of three months from the date of receipt of copy of this order. The trial judge is also directed to take the application filed under Order 9 Rule 7 of C.P.C. on file,



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which was filed along with written statement and consider the same, since they have paid the cost. Accordingly, this Civil Revision Petition is allowed.

No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No

Speaking Order : Yes/No

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To

The Principal District Judge, Chengalpattu.

T.V.THAMILSELVI, J.



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