



WEB COPY



C.R.P.No.1324 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**C.R.P.No.1324 of 2020 &  
C.M.P.No.7209 of 2020**

1. Bakthavatchalam  
2. Latha  
3. Santhosh

...Petitioners

Vs.

Amarjothi

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 19.02.2019 in the I.A.No.397 of 2018 in O.S.No.310 of 2012 on the file of the Additional District Munsif Court, Poonamallee.

For Petitioners : Mr.R.Thanigaarasu

For Respondent : Mr.G.Dilipkumar

## **ORDER**

The present Civil Revision Petition has been filed to set aside the fair and decreetal order dated 19.02.2019 in I.A.No.397 of 2018 in O.S.No.310 of 2012 on the file of the Additional District Munsif Court, Poonamallee.



C.R.P.No.1324 of 2020

2. The brief facts of the case in the nutshell is as follows:-

WEB COPY

The petitioners are the defendants and the respondent is the plaintiff in the suit in O.S.No.310 of 2012 filed to declare the right of passage to the respondent over the D schedule to and from C backyard, for the tractor, carts and cattle and men; and permanent injunction restraining the petitioners from putting up construction or obstruction over D schedule interfering with the respondent's right of passage over the D schedule. The said suit was decreed ex parte on 19.08.2014. Subsequently, I.A.No.397 of 2019 was filed by the petitioners / defendants to condone the delay of 210 days in filing the application to set aside the said ex parte decree. The said I.A., was dismissed and as against the same, the present Revision is filed.

3. The learned counsel for the petitioners would submit that the application to condone the delay was filed way back in the year 2015 itself, whereas, the same was only numbered in the year 2018 and disposed of in the year 2019. Further, the petitioners hail from a limited educational background and thereby, has failed to understand the consequences of the legal proceedings, however, the court below without considering all the facts has dismissed the condone delay application, thereby pleaded to allow the present Revision.



C.R.P.No.1324 of 2020

4. Per contra, the learned counsel for the respondent vehemently submitted that wantonly in order to protract the proceedings, the petitioners have filed the present petition. Further, the affidavit of the petitioners are silent regarding the illness of the petitioners, thereby pleaded to dismiss the present Revision.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the documents placed on record.

6. It is an admitted fact that the suit in O.S.No.310 of 2012 is to declare the right of passage to the respondent over the D schedule to and from C backyard, for the tractor, carts and cattle and men; and subsequently, for permanent injunction restraining the petitioners from putting up construction or obstruction over D schedule interfering with the respondent's right of passage over the D schedule. The said suit was decreed exparte on 19.08.2014 and the application to set aside the exparte decree was filed with a delay of 210 days.

7. On going through the plaint it is seen that the father of the 1<sup>st</sup> petitioner and the father of the respondent are brothers and right from the date of oral arrangement, the said brothers were enjoying D Schedule passage, as common passage to go to the backyard from the street on the



C.R.P.No.1324 of 2020

north by taking the tractor and carts for transport of farm. After the demise of respondent's father and 1<sup>st</sup> petitioner's father, their heirs, the petitioners and respondent were exercising the right of common passage.

8. Though the learned counsel for the respondent vehemently opposed to dismiss the present Revision, this Court is inclined to brush aside the same, on the sole ground that the dispute is with regard to the passage that too between the family members, who are residing nearby each other and every day, they have to use the said pathway, further, in order to settle the issue and to arrive at an amicable settlement between the parties, this Court allows the present Petition on condition that the learned counsel for the petitioners shall pay a cost of Rs.2,000/- [Rupees Two thousand only] to the learned counsel for the respondent as cost.

9. In view of the above, the present Civil Revision Petition is allowed and the order passed in I.A.No.397 of 2018 is set aside and the delay of 210 days is condoned and the suit in O.S.No.310 of 2012 is restored to file. Consequently, connected miscellaneous petition is closed. No costs.

**16.02.2023**

Index:Yes/No  
Internet:Yes/No  
Speaking / Nonspeaking order  
ssd



C.R.P.No.1324 of 2020

WEB COPY

To

The Additional District Munsif Court,  
Poonamallee.

**V.BHAVANI SUBBAROYAN J.**



WEB COPY



C.R.P.No.1324 of 2020

ssd

**C.R.P.No.1324 of 2020 &  
C.M.P.No.7209 of 2020**

**16.02.2023**