



WEB COPY



C.R.P.No.1017 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1017 of 2014

and

M.P.No.1 of 2014

1. S.Vajjiram (deceased)
2. Senthilkumar
3. Maheswari
4. Rani
5. Kumar
6. Ekambaram
7. Suguna
(Petitioners 2 to 7 are brought on
record as LR's of the deceased sole
petitioner vide Court order dated
01.02.2023 in CMP Nos.27121,
27123 & 27126 of 2019 in
CRP No.1017 of 2014)

...

Petitioners

Vs

1. S.Ganesan
2. Krishnaveni
3. Vasantha
4. Rajakumari
5. Vendammal
6. Saroja
7. Umapathi
8. Sabapathi
9. Jagadeeswari
10. Murugan
11. Vasantha



C.R.P.No.1017 of 2014

12. R. Krishnan
13. Karunakaran
14. Meenakshi

... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of Code of Civil Procedure to set aside the fair and decreetal order dated 03.10.2013 in I.A.No.3 of 2012 in un-numbered A.S.No. of 2012 on the file of the Sub Court, Tirupattur, Vellore District.

For Petitioners	:	Mr. B.Aravind Srivatsan
For R1, R6 to R12	:	Not ready in notice
For R2 to R5, R13 & R14	:	Mr.D.Kannan

ORDER

This Civil Revision Petition has been filed as against the dismissal order of the condone delay petition to condone the delay of 5396 days in filing the appeal suit.

2. The petitioner is the first defendant in the suit filed by the first respondent for partition in O.S.No.1299 of 1984 on the file of the District Munsif, Tirupattur. In the said suit, the petitioner was set ex-parte and ex-parte preliminary decree was passed on 24.01.1997. However, the petitioner did not prefer any appeal suit. On the strength of the preliminary decree, the petitioner filed an application for final decree. In the final decree application also the petitioner was set ex-parte and the ex-parte final decree was passed on 20.07.2004. Aggrieved by the same,



C.R.P.No.1017 of 2014

the petitioner preferred an appeal in A.S.No.28 of 2010 with delay of 5396 days in filing the appeal to set aside the ex-parte final decree.

3. A perusal of the affidavit reveals that he was not properly defended by his counsel in preliminary decree proceedings. In fact, the same counsel advised the petitioner to file appeal suit against the final decree. Therefore, the petitioner, due to his ignorance and without proper defence, failed to file an appeal suit in time and as such there was a delay of 5396 days in filing the appeal. In the eye of law, the petitioner was able to file an appeal suit as against the final decree in A.S.No.28 of 2010. He ought to have filed an appeal suit for the preliminary decree at the time of appeal suit in the final decree. Therefore, the Courts below rightly dismissed the application.

4. In view of the above, this Court finds no infirmity or illegality in the order dated 03.10.2013 in I.A.No.3 of 2012 in un-numbered A.S.No. of 2012 on the file of the Sub Court, Tirupattur, Vellore District. Accordingly, this Civil Revision Petition stands dismissed. However, the petitioner is at liberty to raise all the grounds before the Trial Court in the final decree proceedings. Consequently,



C.R.P.No.1017 of 2014

connected miscellaneous petition is closed. No costs.

WEB COPY

01.03.2023

Index: Yes/No
Internet: Yes/No
Lpp

To
The Sub Judge,
Tirupattur,
Vellore District.

G.K.ILANTHIRAIYAN, J.

Lpp



WEB COPY



C.R.P.No.1017 of 2014

C.R.P.No.1017 of 2014
and
M.P.No.1 of 2014

01.03.2023