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CRP No.2347 of 2014



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2023

CORAM

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

C.R.P. No.2347 of 2014

1. V.Sampath
2. V.Janakiraman
3. V.Sridhar Petitioners

Vs

1. K.Krishnaveni
2. K. Haridass @ Govindhan
3. K.Chakrapani
4. K.Vennila
5. K.Saraswathy
6. K.Lakshmi Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the order dated 07.08.2013 made in I.A.No.233 of 2010 in A.S.SR No.7885 of 2008 on the file of the Principal District Court, Chengelpet and consequently, condone the delay of 2268 days in filing the appeal in A.S.SR No.7885 of 2008 on the file of the Principal District Court, Chengelpet.

For Petitioners : Mr.Venkatesh Mahadevan

For R2 to R4 & R6 : Mr.AR.Balaji
for Mr.B.Vijay

**ORDER**

This Civil Revision Petition has been filed to set aside the order dated

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07.08.2013 made in I.A.No.233 of 2010 in A.S.SR No.7885 of 2008 on the file of the Principal District Court, Chengelpet, thereby dismissing the petition to condone the delay in filing the appeal suit.

2. The petitioners are the defendants 3 to 5 in the suit filed by the respondents for partition. At the time of filing the suit, the petitioners were minors, aged about 10, 6 and 3 ½ respectively. The first defendant is their maternal uncle and the second defendant is their father. The suit was contested and preliminary decree was passed on 04.04.1975 in O.S.No.22 of 1971. There was no appeal filed by any of the defendants as against the preliminary decree passed in O.S.No.22 of 1971. On the strength of the preliminary decree, the respondents herein filed final decree application in I.A.No.1977 of 1997. The Advocate Commissioner was appointed. On the basis of the report of the Advocate Commissioner, a decree was passed on 20.06.2002.



3. Pending final decree application, the petitioners were attained majority and they filed an application to declare them as major in I.A.No.1005 of 1986 and they were declared as major by an order dated 12.12.1986. Therefore, the final decree application itself was filed as against the petitioners. However, they were set ex-parte in the final decree proceedings. The final decree was passed on 20.06.2002. On the strength of the final decree, an execution petition was filed for taking possession of the suit property by the respondents. Only thereafter, the petitioners herein preferred an appeal suit in the year 2008 and the same was filed on 15.09.2008 in A.S.SR.No.7885 of 2008. It was not filed along with the condone delay petition and as such, it was returned by the office of the First Appellate Court. Therefore, in the year 2010, the petitioners filed a petition to condone the delay of 2268 days in preferring the appeal suit.

4. A perusal of the affidavit filed in support of the condone delay petition reveals that the suit was contested by the defendants 1 and 2 viz., their maternal uncle and their father. Therefore, they had no knowledge about the preliminary decree. In fact, in the final decree proceedings also they were kept in dark, the first and second defendants alone contested the



final decree. Therefore, they had no knowledge about the final decree passed by the Trial Court. In fact, they had also no knowledge about the execution petition filed by the respondents herein in E.P.No.38 of 2004, in order to execute the final decree. In the meanwhile, the first and second defendants died in the year 2006 and 2008 respectively. When the persons came to the suit property for executing the final decree, they came to know about the final decree and execution petition. Therefore, there was delay of 2268 days in filing the appeal suit.

5. They also contended that the first respondent is none other than the wife of the first defendant. They got separated and the first respondent filed a suit for partition. Further, they contended that the first defendant in the suit also colluded with the first respondent and failed to contest the final decree. On one hand, the petitioners had taken a stand that the main suit itself was contested by the first and second defendants viz., their maternal uncle and their father. On another hand, in the condone delay petition, he had taken a stand that the first defendant also colluded with the first plaintiff and failed to contest the final decree application. In the final decree, as above stated the petitioners themselves filed an application in I.A.No.1005



of 1996 for declaration them as major and the said application was allowed by an order dated 12.12.1986. The first and second defendants were discharged from their guardianship. Further, they did not appear before the final decree proceedings and set ex-parte. Therefore, it cannot be said that the petitioners were kept in dark in the final decree proceedings. In fact, the first and second defendants were also set ex-parte in the final decree proceedings. Further, it also cannot be stated that they were minor in the suit and as such, they had no knowledge to prove the final decree proceedings, they themselves filed a petition to declare them as major in final decree proceedings in I.A.No.1005 of 1986 and they were declared as major.

6. That apart, only after two years from the date of filing the petition, the petitioners filed a petition to condone the delay of 2268 days. Therefore, two years period also taken as delay and as such, the petitioner failed to state sufficient reason for the huge delay in preferring the appeal. Therefore, the Court below rightly dismissed the petition.

7. In view of the above, this Court finds no infirmity or illegality in



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the order dated 07.08.2013 made in I.A.No.233 of 2010 in A.S.SR No.7885
of 2008 on the file of the Principal District Court, Chengelpet. Accordingly,
this Civil Revision Petition stands dismissed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The Principal District Judge,
Chengelpet.

G.K.ILANTHIRAIYAN,J.



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