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C.R.P.No.2221 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

CORAM

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

C.R.P.No.2221 of 2019
and C.M.P.No.14379 of 2019

Elumalai .. Petitioner
Vs.

1. Minor. Subha
2. Minor. Abi
3. Minor. Appu
Minors 1 to 3 represented by Mother/
Next Friend Vijaya
Perumal (Died)
Ayyanar (Died)
4. Veerasamy

.. Respondents

Prayer : Civil Revision Petition filed under Section 115 of CPC to set aside the order and decree dated 22.04.2019 in I.A.No.914 of 2015 in O.S.No.320 of 1993 on the file of Principal District Munsiff, Tiruvannamalai and grant such other relief deem fit and proper under the circumstances of the case.

For Petitioner : Mr.R.Rajarajan
For R1 to R3 : Mr.Adarsh Subramanian
for Mr.V.Prakash Babu
For R4 : No appearance
Notice served



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ORDER

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This Civil Revision Petition has been filed as against the order and decree dated 22.04.2019 in I.A.No.914 of 2015 in O.S.No.320 of 1993 on the file of Principal District Munsiff, Tiruvannamalai, thereby allowing the petition to condone the delay of 81 days in filing the petition to set aside the exparte decree.

2. The petitioner is the plaintiff and the respondents are the defendants in the suit in O.S.No.320 of 1993 filed for partition. In the said suit, the respondents 1 to 3 were set exparte and an exparte decree was passed. However, they had knowledge about the exparte decree only on 16.03.2015 and filed a petition to set aside the exparte decree with a delay of 81 days.

3. A perusal of the affidavit filed in support of the condone delay petition revealed that they have been added as legal representatives of the deceased Ayyanar in I.A.No.631 of 2010 dated 29.11.2012. In the said petition, the respondents 1 to 3 were represented through their grand mother as guardian. However, the respondents 1 to 3 were not there with



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their grand mother as alleged in the petition. They were in the care and custody of their mother. They were represented through their mother.

4. The learned counsel for the petitioner would submit that the respondents 1 to 3 suppressed the fact that they had knowledge about the exparte decree and they have wrongly mentioned the delay as 81 days. In fact, they have also filed a suit for permanent injunction in respect of the very same property and the same was dismissed.

5. However, a perusal of the counter filed in the condone delay petition revealed that no where they have stated that the respondents 1 to 3 have already filed a suit for permanent injunction in respect of the very same property and the same was dismissed. That apart, it is a suit for partition and the respondents 1 to 3 were impleaded as parties to the suit after the demise of their father.

6. Therefore, the Trial Court rightly allowed the petition and this Court finds no infirmity or illegality in the order passed by the Court below



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and this revision is liable to be dismissed. However, the respondents 1 to 3 have now attained majority. Therefore, they are at liberty to file necessary application before the Trial Court to declare them as major.

7. Accordingly, this Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous petition is closed. No costs.

02.01.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

mn

To

The Principal District Munsiff, Tiruvannamalai.



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G.K.ILANTHIRAIYAN,J.

mn

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