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C.R.P.(PD).No.2786 of 2019
and C.M.P.No.18254 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM : **MR.JUSTICE N.SESHASAYEE**

C.R.P.(PD).No.2786 of 2019
and C.M.P.No.18254 of 2019

1.Nallathambi
2.Mohankumar

... Petitioners

Vs.

1.Rangasamy
2.Indirani
3.Selvalakshmi

... Respondents

Prayer: Petition filed under Article 227 of Constitution of India, seeking to set aside the fair and decreetal order dated 08.04.2019 made in I.A.No.588 of 2017 in O.S.No.60 of 2012 on the file of the Subordinate Judge, Kallakurichi.

For Petitioners : Mr.K.A.Ramakrishnan

For Respondents : Mr.V.Gunasekar

ORDER

The defendants 3 and 4 in O.S.No.60 of 2012 are the petitioners herein.

They have filed this revision challenging an order passed in I.A.No.588 of



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2017, dismissing their prayer for condonation of delay of 968 days for setting aside an exparte preliminary decree for partition.

2.Introducing the case, the learned counsel for the revision petitioners submitted that the plaintiff has a brother named Kandasamy. They along with one Subramaniam had purchased two items of properties, of which one property measuring to an extent of 2.49 acres comprised in S.No.271/3 and the other measuring about 4.41 acres comprised in S.No.270/1. In terms of the written statement filed along with I.A.No.588 of 2017, the contention taken was that there was an oral partition among the co-owners of these two properties, by which both plaintiff and his brother Kandasamy were allotted the property measuring to an extent of 4.41 acres in S.No.270/1 and in lieu of Subramaniam's share in Item No.2, he was given the entire property measuring to an extent of 2.49 acres in S.No.271/3. The learned counsel added that the plaintiff and his brother have even sold their shares of the property to an extent of 4.41 acres, and now the suit is laid for partitioning 2.49 acres, in which the plaintiff does not have any share.



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3.Explaining the non participation of the defendants in the proceedings, the learned counsel submitted that the said Subramaniam has passed away and the suit was laid against his widow, the 1st defendant and his two sons namely defendants 3 and 4. He also added that 4th defendant is not mentally fit enough to take care of his affairs and the 1st defendant has passed away. Given the circumstances, the parties are not in a position to instruct the counsel, even though they had earlier engaged a counsel to enter appearance. He further submitted that he came to know about the preliminary decree passed only when the notice of the final decree served on him.

4.Per contra, the learned counsel for the plaintiff submitted that the sister of these revision petitioners had laid a separate suit for partition in O.S.No.622 of 2009 and these revision petitioners were diligently participating as the reasons adduced is false.

5.The point is how this Court is required to exercise its discretion: Should it be with a view to discipline and punish a litigant or to understand the justice



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of the cause involved, and promote justice ?
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6.This Court considers that given the nature of defence taken in the case, the latter would be the ideal course. True, it might have inconvenienced the plaintiff but then that can be compensated in costs.

7.This Court is inclined to allow this Civil Revision Petition on payment of cost of Rs.10,000/- (Rupees Ten Thousand only) payable to the respondents.

8.This Court understands that except the plaintiff in O.S.No.622 of 2009, others are before this Court in this suit. Since O.S.No.60 of 2012 as well as O.S.No.622 of 2009 relate to the same subject matter of the suit, the learned Principal District Judge, Villupuram is required to examine the same and consolidate the suits by exercising his *suo moto* power under Section 24 C.P.C.

9.The learned District Judge is required to take a call on the matter at the very earliest. Since the plaintiff is stated to be in his 70's, the trial Court is



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also required to expedite the process of trial and dispose of the suits at the very earliest.

10.This Civil Revision Petition is allowed on payment of cost of Rs.10,000/-(Rupees Ten Thousand only) payable to the plaintiffs. No Costs. Consequently, connected miscellaneous petition is closed.

11.Post the matter on 13.04.2023 under the caption "for reporting compliance".

31.03.2023

Anu

Index : yes / no

Internet : yes / no

Speaking / non speaking

Copy to:

The Subordinate Judge, Kallakurichi.



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N.SESHASAYEE.J.,

Anu

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