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CRP No.2679 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2679 of 2021

Rathakrishnan

.... Petitioner

Vs

1.Periyasamy

Palanisamy (Died)

2.Krishnamoorthy

3.Pappathi

4.Shanmugasundaram

5.Senthil

6.Kannan

7.Kamalam

8.Satheesprabhu

9.Pappathi @ Samiathal

10.Tamilselvi

11.Mohaneswari @ Kavitha

12.Dineshkumar

...

Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and final order dated 05.08.2021 in I.A.No.166 of 2017 in O.S.No.163 of 2009 on the file of Subordinate Judge, Perundurai.



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For Petitioner : Mr.C.Ramaraj
for Mr.M.Guruprasad

For Respondents : Mr.S.Kaithamalai Kumaran
For R.1 and R.8
RR.2 to 5, & 7 to R.9 – Notice dispensed with
R.11 – Served- No appearance
R.6 & R.10 – Not ready in notice

ORDER

This Civil Revision Petition arises against the order dismissing an application filed to restore the suit. O.S.No.163 of 2009 was presented for partition. It was presented before the Subordinate Court, Erode. Subsequently, due to bifurcation of jurisdiction, the suit stood transferred to the file of Subordinate Court, Perundurai. The plaintiff had engaged one Mr.R.Govindan, a Senior Practitioner at Erode. The suit was listed on 02.12.2011 and on that date, since the counsel was not present and the plaintiff was also absent, the suit was dismissed for default.

2. It is the case of the petitioner/plaintiff that he came to know about the dismissal of the suit only on verification. To shock and surprise, he also came to know that Mr.R.Govindan also passed away and that is the reason why there



was no appearance on his behalf before the Court. He engaged a fresh counsel and filed an application to restore the suit, which has been dismissed for default with a delay of 18 days. The said application was dismissed by the trial Judge on the ground that the petitioner was deliberately dragging on the matter and in not filing the application before the jurisdictional court, but, filing the application for restoration before the I Additional Sub Court, Erode. Though the application was filed as early as on 20.01.2012, the Court below found that the plaintiff kept over the application for a period a five years and got it numbered only in the year 2017. The Court below took this as the main reason and dismissed the application.

3. Mr.S.Kaithamalai Kumaran, learned counsel appearing for the respondents 1 and 8 submits that the aforesaid details would show that the entire idea of the plaintiff is only to drag on the matter and prevent a senior citizen enjoying the property. He would state that the finding of the Court below would show that there is lackadaisical attitude and a supine indifference that has been shown by the plaintiff towards the conduct of the suit. He would very strenuously oppose the application for restoration as well as condonation of delay.



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4. Mr.C.Ramaraj, learned counsel appearing for the petitioner states that the petitioner is employed in I.T.Firm and therefore, he is away from Erode and hence he has to depend upon third parties in order to conduct the suit.

5. I have heard both sides and gone through the records.

6. The petitioner before me is the plaintiff in a suit for partition. The cause of action for filing a partition suit arises day-today. The reason given by Mr.C.Ramaraj that the counsel for the petitioner before the trial Court had passed away is not disputed. It is the practice that if a counsel passes away, the Court issue notice in matters, in which, the counsel had appeared to the parties, so that, the parties can take appropriate steps to make alternative arrangement. Unfortunately, in this case, the plaintiff, being away from his native place, he was not in a position to attend the Court and since his counsel had also passed away, he was not in a position to conduct the suit. It is in such unfortunate circumstances, the suit was dismissed for default.

7. I am convinced with the reasons given by the petitioner and I am



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inclined to condone the delay. However, I have to take into consideration the objections raised by Mr.S.Kaithamalai Kumaran that the idea of the plaintiff is only to drag on the matter. Therefore, while condoning the delay, I am inclined to impose heavy conditions.

8. The reason of the death of the counsel, being a sufficient cause, the delay of 18 days in filing the application to restore the suit is condoned with the following conditions:

- (i) The plaintiff shall pay a sum of Rs.10,000/- (Rupees ten thousand only) to the contesting defendant on or before 31.08.2023;
- (ii) On payment of the aforesaid cost, I.A.No.166 of 2017 will stand allowed;
- (iii) On proof of payment, the learned Judge is requested to number the application under Order 9 Rule 9 of Civil Procedure Code and allow the same and restore the suit in O.S.No.163 of 2009 to file.



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V.LAKSHMINARAYANAN,J.

sr

9. The learned Subordinate Judge, Perundurai is directed to dispose of the suit in O.S.No.163 of 2009 within a period of nine months from the date of restoration and submit a report before this Court regarding the same.

10. With the above direction, the Civil Revision Petition is allowed. No costs.

16.08.2023

Index:Yes/No

Speaking order/Non-speaking order

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To

The Subordinate Judge, Perundurai

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