



C.R.P.No.3934 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:
THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3934 of 2023
and
C.M.P.No.24236 of 2023

Ponnusamy (died)

1. Ranganayaki @ Muniyammal
2. Chandra

... Petitioners

-Vs-

1. Palaniyammal @ Chitra
2. Pakkiyam

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 23.01.2019 passed in I.A.No.560 of 2018 in O.S.No.177 of 2008 on the file of Subordinate Judge's Court, Kallakurichi.

For Petitioner : Mr.N.Loganathan



C.R.P.No.3934 of 2023

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ORDER

Challenging the impugned order passed in I.A.No.560 of 2018 in O.S.No.177 of 2008 passed by the learned Sub-Judge, Kallakurichi, the Revision Petitioners/defendants 2 and 3 preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the 1st respondent/plaintiff filed a suit in O.S.No. 117 of 2008 against the defendants 1 to 4 for the relief of partition, in which, notice served on the defendants. On receipt of notice, they have appeared through their counsel and submitted their written statement. However, during the trial proceedings, on 18.10.2016, the Revision Petitioners were not able to appear before the trial court, hence, they were remained exparte and an exparte preliminary decree was passed. Thereafter, they have filed an application to condone the delay of 363 days in filing the petition to set aside the exparte preliminary decree in I.A.No.560 of 2018. In fact, the 1st defendant Ponnusay was aged about 90 years and he was looking after the entire proceedings, so, his legal heirs are not able to follow the proceedings and subsequently, he died.



C.R.P.No.3934 of 2023

Therefore, there is a delay of 363 days in filing the said application.

Furthermore, his legal heirs are illiterate person, they have not known about the proceedings. But, the trial judge erroneously dismissed the application without appreciating all those facts. Challenging the same, the defendants 2 and 3 have preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that 1st defendant Ponnusamy, who was aged about 90 years was looking after the proceedings and he died leaving behind his legal heirs. As his legal heirs are all illiterate persons, they are not able to follow the proceedings. So, the delay of 363 days arisen in filing the application to set aside the exparte preliminary decree. But, without considering their submissions, the trial judge dismissed the said application. Hence, he prayed to set aside the findings of trial judge.

5. Records perused. On perusal of entire facts, it is true that the 1st defendant Ponnusamy is aged about 90 years and he is only looking after the entire proceedings. After his death, his wife and two daughters were impleaded as legal heirs. They are all illiterate persons and the reasons assigned by them would probablise that they were not able to follow the proceedings. However, they are having valid defence to defend their case,



C.R.P.No.3934 of 2023

but the trial judge erroneously failed to appreciate those facts. Therefore, the findings of learned trial judge is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No.560 of 2018 in O.S.No.117 of 2008 is set aside and the said application is ordered to be allowed. However, on considering the delay, the Revision Petitioners/defendants 2 and 3 are directed to pay the cost of Rs.3000/- to the 1st respondent/plaintiff within a period of two weeks from the date of receipt of copy of this order. Thereafter, the trial judge is directed to proceed with final decree proceedings and dispose the suit as per manner known to law as expeditiously as possible. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

16.11.2023

Index : Yes/No

Speaking Order : Yes/No

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To

The Sub-Judge, Kallakurichi.



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C.R.P.No.3934 of 2023

T.V.THAMILSELVI, J.

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C.R.P.No.3934 of 2023

16.11.2023