



CRP No.4047 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 09.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.R.P.No.4047 of 2023

and

CMP.No.24723 of 2023

N.Gunalan (Deceased)

1.N.Jothi

2.R.Parimala

3.R.Shanmugam

4.R.Parthiban

5.R.Mahesh

...

Petitioners

(2nd appellant is a recorded as
legal representative of deceased
N.Gunalan as per order dated 05.11.2016
passed in I.A.12918/2016) (Amendment
carried as per order dated 06.01.2017
in I.A.No.15578/2016)

/vs/

M.K.Ambika devi (Deceased)

1.K.Ramesh Kumar

2.K.Rajesh Kumar

...

Respondents

(Respondents 1 and 2 are recorded as legal
representative of deceased 1st plaintiff as
per order dated 02.09.2015 passed in memo)
(Amendment carried as per order
dated 01.07.2016 in I.A.No.16530 of 2015.)



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PRAYER: Civil Revision Petition has been filed under Section 115 of Civil Procedure Code to set aside the order dated 02.09.2023 passed in I.A.No.3 of 2022 in A.S.SR.No.3247/2019 on the file of the Principal City Civil Court at Chennai by allowing this Civil Revision Petition.

For Petitioners : Mr. B.Lokeswara

ORDER

Challenging the impugned order dated 02.09.2023 in I.A.No.3 of 2022 in A.S.SR.No.3247 of 2019, the revision petitioners/defendants in the original suit filed this revision petition.

2.Before the trial Court, the respondents filed the suit for partition and the same was decreed, against which, the defendants preferred an appeal but there was a delay of 905 days to number the appeal that application was dismissed by the trial judge holding that the reason for the delay has not been explained and the petitioners would have participated in the proceedings of the partition suit till the date of passing of preliminary decree. Admittedly, a preliminary decree was passed on 20.03.2017 and the appeal has to be filed on 24.04.2017 but they have not preferred the appeal in time. Only in the year 2019, they preferred an appeal with the delay of 905 days and to condone the delay of 905 days, they filed a condone delay application before



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the appellate Court and the same was dismissed. Admittedly, so far, the final decree has not been passed.

3. Heard the submission made by the learned counsel appearing for the petitioners and perused the materials available on record.

4. On perusal of records, it is revealed that both the parties are close relatives and the suit is pending from the year 1998 and the first defendant is a mentally ill person and he was died on 14.02.2014 and there is a change in circumstances, therefore, the delay in filing appeal is ordered to be condoned on payment of cost of Rs.20,000/- to the respondents within a period of two weeks from the date of receipt of a copy of this order and on such payment, the appeal is ordered to be taken on file by the appellate Court and the appellate Judge is hereby directed to dispose the same within a period of three months, since the suit is pending from the year 1998 and the revision petitioners are directed to co-operate for the appeal proceedings without making unnecessary delay.



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With the above observation and direction, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
sms

09.11.2023

To

1.The Principal City Civil Court,
Chennai.



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