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C.R.P.(NPD) No.4577 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)No.4577 of 2017
and C.M.P.No.21591 of 2017

Periyasamy (Died)

P.Murugesan

... Petitioner

(Sole Petitioner Died - Petitioner -2 brought
on record as LR's of the deceased Sole Petitioner
Viz Periyasamy vide court order dated 09.01.2023
made in CMP.Nos.567, 569 & 571 of 2023 in
CRP.No.4577 of 2017 by this Court)

vs.

1.Perumayammal

2.Rukmani

3.Valliammal

4.Alamelu

5.Jeya Lakshmi

6.P.Alamelu

7.Valarmathi

... Respondents

(Sole Petitioner Died. Respondents 6 and 7 brought
on record as LR's of the deceased Sole Petitioner
Viz Periyasamy vide court order dated 09.01.2023
made in CMP.Nos.567, 569 & 571 of 2023 in
CRP.No.4577 of 2017 by this Court)



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Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the Subordinate Judge's Court at Rasipuram, dated 01.12.2015 in I.A.No.140 of 2014 in O.S.No.13 of 2011.

For Petitioner: Ms.Divya Preathika R
for Mr.R.Bharath Kumar

For Respondents: Mr.R.Ganesh Kumar (for R4 & R5)
Mr.V.Sudalai Selvan (for R2)

ORDER

This is a suit for partition filed by the mother against the son. In the said suit, an exparte decree was passed on 02.02.2013. To set aside the same and to condone the delay of 414 days, an application was filed in I.A.No.140 of 2014.

2.The reason that was given by the petitioner is that he was not in town and therefore he could not file the application to set aside within the period of limitation. In order to substantiate his case, he had neither entered the witness box nor had he produced any documents in order to prove the same.



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3. Sufficient cause is *sine qua non* for the purpose of condoning the delay. The learned trial Judge did not find any sufficient cause and dismissed the application. I concur with the learned trial Judge that the defendant has not given any sufficient cause. The defendant has not even bothered to enter the witness box to substantiate his case. If he was truly out of area or had fallen sick, as now being pleaded by the learned counsel for the petitioner, some evidence would have been let into substantiate the allegation. There is absolutely no proof to show that the defendant was not in station during the relevant time nor were the medical records produced before the Court. I do not find any reason to condone the delay. This Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13.07.2023

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

vs

To

The Subordinate Court,
Rasipuram.



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V. LAKSHMINARAYANAN,J.

VS

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and C.M.P.No.21591 of 2017**

13.07.2023