



C.R.P.(PD) No.142 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.142 of 2019
and C.M.P.No.1275 of 2019

1.Kavitha

2.Muthu

... Petitioners

vs.

A/M.Kailasanathar Koil, Kovalam,
Rep by its Fit Person
Kovalam, Thirupurur Taluk,
Kanchipuram District.

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India
against the Fair and Decreetal order passed by the learned District
Munsif at Chengalpattu in I.A.No.41/13 in O.S.No.419/1996 dated
12.01.2018.

For Petitioners: Mr.P.Vijendran

For Respondent: No Appearance



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ORDER

WEB COPY The defendant in O.S.No.419 of 1996 is the Civil Revision Petitioner. The suit had been filed for recovery of possession and for mesne profits. A written statement was filed by the defendants on 29.12.1996 and thereafter they remained exparte.

2.An exparte decree came to be passed on 23.09.2004. To set aside the same, an application seems to have been taken out by the civil revision petitioner to condone the delay of 3535 days under Section 5 of the Limitation Act.

3.Mr.P.Vijendran, learned counsel appearing for the petitioners states the said application is pending. In the meanwhile, the decree holder has taken out an application for appointment of an Advocate Commissioner to enquire into the mesne profits as per column 4 of the decree. This was resisted by the judgment debtor on the ground that the set aside petition together with condone delay is pending and therefore, an Advocate Commissioner cannot be appointed.

4.As per the decree in column No.4, provision has been made for calculation of mesne profits under Order 20 Rule 12. One of the manner in which the mesne profits is calculated is by an appointment of Advocate Commissioner, who will decide on the profits which the



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defendant has made by virtue of being in possession of the property.

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5.The mere fact that an application under Section 5 has been filed, is not a ground to defer the application for appointment of Advocate Commissioner. Therefore, the order passed by the learned trial Judge is not erroneous and necessarily has to be confirmed. Accordingly, the order passed in I.A.No.41 of 2013 in O.S.No.419 of 1996 dated 12.01.2018 stands confirmed, this Civil Revision Petition is dismissed.

6.The petitioner shall remind the Court that his application under Section 5 of the Limitation Act is pending and if such a reminder is given, the learned trial Judge is requested to take up the application for disposal at the earliest. 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 District Munsif,
Chengalpattu.



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V. LAKSHMINARAYANAN,J.

VS

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