



C.R.P(MD)No.1197 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.06.2023**

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1197 of 2023

and

C.M.P(MD)No.5776 of 2023

1.Subramani

2.Murugan

3.Parvathiyammal

...Petitioners/Petitioners/
Defendants

Vs.

Rajendiran

...Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the exparte decree and judgment passed by the learned Subordinate Court, Uthamapalayam in I.A.No.1 of 2022 in O.S.No.105 of 2013 dated 04.11.2022 and set aside the same.

For Petitioners : Mr.P.Muthuvijayapandian



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ORDER

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The present Civil Revision petition has been filed against the exparte decree and judgment in I.A.No.1 of 2022 in O.S.No.105 of 2013 dated 04.11.2022 passed by the Subordinate Court, Uthamapalayam.

2. The petitioners are the defendants in O.S.No.105 of 2013. The said suit was filed by the respondent herein to partition the suit schedule property. After the suit summon was served, the petitioners herein failed to appear and therefore, they were set ex parte on 07.04.2014. Under these circumstances, the petitioners have filed I.A.No.1 of 2022 to condone the delay of 2704 days in filing the application to set aside the ex parte decree passed on 07.04.2014. The Subordinate Court, Uthamapalayam has dismissed the application with the following observations:

(ii) This petition is filed under Sec.5 of the Limitation Act to condone the delay of 2704 days in filing a petition to set aside the exparte decree passed on 07.04.2014. This court sees that the main suit was filed by the Respondent as Plaintiff seeking the relief of partition. A Preliminary decree was passed on 07.04.2014 and the share of the Plaintiff was allotted in the suit properties. The Plaintiff filed IA No.212/2021 seeking the relief of passing final decree and it is pending for disposal. Now the Defendants as Petitioners herein had filed this petition to condone the delay of 2704 days. The reason stated by the Petitioners is that they were engaged in amicable settlement



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before the elders and as such no petition was filed to set aside the exparte Preliminary decree

(ii) The Petitioners had also stated that when the final decree petition was filed by the Respondent, the 1st Petitioner and his mother suffered illness and his brother went to Kerala. The Petitioners could not able to contact their advocate and as such there was delay of 2704 days. This court sees that the Petitioners had given no valid reasons to condone such enormous delay. They have plainly and casually stated that peaceful talks were going on which could not be accepted as genuine reason. The Petitioners failed to mention about the nature illness suffered by the 1st Petitioner and his mother and also the period undergone for the treatment. Even otherwise the illness pointed out by the Petitioners is only after filing the final decree petition during the year 2021 which is no way connected to the filing of petition to set aside the exparte decree.

(iv) The Petitioners failed to explain each and every day delay properly. The main suit was filed for the relief of partition only and the Respondent/Plaintiff being their brother, the Petitioners who had knowledge about the Preliminary decree ought to have taken immediate steps to set aside the exparte decree. No leniency can be given to the Petitioners for their lackadaisical attitude. This court find it fit to dismiss this petition as devoid of merits.

(v) In the result, this petition is dismissed. No costs.

3. A perusal of the affidavit filed by the petitioners for condoning the delay makes it clear that the delay has not been properly explained by the petitioners to condone the enormous delay of 2704 days in filing the application under Section 5 of the Limitation Act.



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4. In my view, no prejudice will be caused to the petitioners as ultimately each of the petitioners are entitled to a share in the property in respect of which the respondent has filed the above suit for partition.

5. The present Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

01.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Subordinate Court,
Uthamapalayam.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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