



C.R.P.(MD)No.1379 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.1379 of 2023

and

C.M.P.(MD)No.6853 of 2023

Belvendren

...Petitioner/Respondent/1st Defendant

-Vs-

1.Fatima
2.Mariyalos Babu
3.Philominah
4.Yagammal
5.Raj
6.Victoria
7.Vijaya
8.Williams

... Respondents/Petitioners/Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the order dated 20.04.2023, passed in I.A.No.1 of 2022 in O.S.No.114 of 2010, on the file of the Principal District Munsif Court, Sivagiri.

For Petitioner : Mr.F.X.Eugene



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ORDER

The suit has been filed by the respondents for partition of the suit schedule property, wherein apart from the petitioner, the petitioner's brother viz., Santhanam was arrayed as second defendant. During the pendency of the said suit, it is informed that the petitioner's brother Santhanam died. The suit was also dismissed for non-prosecution on 23.02.2017. Thereafter, the respondents filed I.A.No.1 of 2022 for condoning the delay in restoring the suit dismissed on 23.02.2017. It is further informed that the Court has condoned the delay of 2049 days without any reasoning. That apart, it is submitted that before allowing the application in I.A.No.1 of 2022, the respondents/plaintiffs should have impleaded the legal heirs of the deceased brother viz., Santhanam. Therefore, it is submitted that there is a gross irregularity by the trial Court, while allowing the application in I.A.No.1 of 2022.

2.I have considered the rival submissions made by the learned counsel for the petitioner and perused the materials available on record.



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3.The reasoning given by the Court, while condoning the delay of 2049 days is cryptic, the fact however remains that the suit is filed only for partition of property wherein the petitioner and his brother were defendants. By restoring the suit by the Court, the Court is not decreeing the suit. The Court can order impleading the LRS of the petitioner's brother viz., Santhanam, who is said to have died during the pendency of the suit. No prejudice has been caused by restoring the suit to the file of Court. Therefore, the present Civil Revision Petition is liable to be dismissed. There shall be however a direction to the learned District Munsif Court, Sivagiri, to give an opportunity to the respondents to implead the LRS of the second defendant viz., Santhanam, before passing further orders in application filed under Order 9 Rule 7 of C.P.C. The learned District Munsif Court, Sivagiri, shall endeavour to dispose of the suit in O.S.No. 114 of 2010 as early as possible preferably, within a period of fifteen months thereafter. This Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.06.2023

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C.SARAVANAN, J.
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To:

- 1.The the Principal District Munsif Court,
Sivagiri.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P.(MD)No.1379 of 2023
and
C.M.P.(MD)No.6853 of 2023

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