



CRP(MD).No.1655 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.08.2023

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.1655 of 2023

1.Eswaran

2.Lakshmi Ammal

: Revision Petitioners

Vs.

1.Santhamani

2.Ramaya Ammal

3.Gowthaman

4.Samiyathal

5.Baby

6.Vasanthi

7.Samiyappan

8.Subramani

.. 1st respondent / plaintiff

.. Respondents 2 to 8/
defendants 3 to 9

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No. 1 of 2022 in ASSR.No.1278 of 2022, dated 03.01.2023 on the file of the Principal District Judge, Karur.



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For Petitioners :Mr.K. Suresh

For Respondents :No appearance

ORDER

This Civil Revision Petition is preferred against the fair and decreetal order, passed in I.A.No.1 of 2022 in ASSR.No.1278 of 2022, dated 03.01.2023 on the file of the Principal District Judge, Karur.

2. The first respondent herein as plaintiff filed a suit in O.S.No.483 of 2010 against the defendants for the relief of declaration to declare the sale deed, dated 20.05.1993 as null and void and not binding on the plaintiff's lawful share in the property and also for declaration declaring the alleged sale deed, dated 07.05.2004 executed between the defendants 1, 2 and the 9 as null and void and not binding on the plaintiff's lawful share in the suit properties and for declaration declaring the alleged settlement deed, dated 07.04.2010 executed between the defendants 1 and 2 regarding a portion of the suit properties as null and void and not binding on the plaintiff and for partition of the suit properties into three equal shares and one share to the plaintiff and for permanent injunction



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restraining the defendants their men, agents, servants, subordinates or any one on behalf of him from creating any kind of encumbrances over the suit properties till the suit properties is amicably partitioned among the plaintiff and the defendants 1 and 2.

3. The revision petitioners herein are the defendants 2 and 10 in the above said suit and they were set ex parte in the said suit. Since they are absent, ex parte decree was passed against them. Thereafter, the petitioners filed an application in I.A.No.01 of 2022 with a delay of 1297 days in filing an appeal and the said application was dismissed by the first Appellate Court stating that no sufficient cause shown by the petitioners to condone the delay. Against the said order, the present Civil Revision Petition has been filed.

4. The learned counsel appearing for the revision petitioners would submit that the revision petitioners' Counsel failed to inform about the stage of the case and also stated that bundle was found missing when the counsel shifted his office and only thereafter, revision petitioners came to know that an ex parte decree was passed against them on 29.06.2018. Hence, the revision petitioners filed an application in I.A.No.01 of 2022 in



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A.S.SR.No.1278 of 2022, to condone the delay of 1297 days in filing an appeal against ex parte decree passed in the above said suit. He would further submit that petitioners herein suffered viral fever and consequently, could be affected by jaundice and was taking native treatment for a period of two years and hence, the petitioners were not able to file an appeal in time.

5. The further contention of the learned counsel for the petitioners that after deducting the days covered under Covid 19, Period there is only a delay of 564 days in preferring an appeal. However, the trial Court erroneously dismissed the application filed by the revision petitioners. He further contended that the Court below must take liberal view in the condone delay application and the party must be allowed to contest the case according to law. Further, the matter can be decided on merits by providing due opportunity to the parties to prove their case. He further contended that where the reasons assigned by the petitioners are genuine the delay can be condoned.

6. In support of his contention the learned counsel appearing for the petitioners relied upon the decision of the Hon'ble Supreme Court reported in **2018 (15) SCC 127 in the case of (Ummer Vs. Pottengal**



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Subida and others) and the another Judgment of this Court reported in ***2009(5) CTC 414 (Pavaymmal and another Vs. S.N. Chockalingam and others)***. In spite of notice served to the respondents, they remained absent.

7. The relevant portion of the Judgment reported in ***2018 (15) SCC 127 in the case of (Ummer Vs. Pottengal Subida and others)*** is extracted hereunder:

*“Where reasons assigned by applicant are genuine
delay can be condoned”*

8. In the Judgment of this Court reported in ***2009(5) CTC 414 (Pavaymmal and another Vs. S.N. Chockalingam and others)*** it has been held as follows:

“7. The word “sufficient cause” under Section 5 of the Limitation Act will have to be interpreted in the purposeful and meaning way. As a matter of fact, the Court of law is not supposed to adopt a pedantic approach instead it has to take a liberal view while dealing with the Application of condonation of delay. Ordinarily, a party does not stand to gain by lodging in Appeal belatedly. Refusing to condone a delay will result in meritorious matter being thrown out at the nascent stage and thereby



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the cause of justice being defeated. On the other hand, if a party is allowed to enter into the scene of main proceedings, then the matter can be decided on merits. Of course a Court of law providing due opportunities to the parties to prove their case. The judiciary is respected not on account of its power to legalise injustice on technical grounds but it is capable of removing injustice and is expected to do so. This Court is of the considered view that substantial justice will have to be delivered to the parties overriding technicalities.”

9. Heard the learned counsel appearing for the petitioners and perused the materials available on record.

10. The Judgment relied on by the petitioners counsel is squarely applicable to the facts of the present case. Upon perusing the contention of the application and the affidavit filed by the revision petitioners and with regard to the totality of the facts and circumstances of the case and the cause shown by the revision petitioners, it is seen that even though the revision petitioners have not strenuously explained with regard to the delay of 564 days in preferring an appeal to the satisfaction of this Court, by taking liberal view in order to give an opportunity to the revision petitioners, this Court is inclined to allow this Civil Revision Petition subject to the condition that the petitioners are directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the first respondent /



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plaintiff directly within a period of two weeks from the date of receipt of a copy of this order, failing which, this Civil Revision Petition shall stand dismissed automatically without any further reference to this Court. On payment of cost, the first appellate Court is directed to number the appeal within a week and thereafter, dispose the same within a period of three months. In the event of the first respondent / plaintiff is refused to receive the amount the same may be deposited to the credit of the appeal Suit.

11. In the result, this Civil Revision Petition is allowed. No costs.

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Index : Yes / No
Internet : Yes/ No
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To

The Principal District Judge, Karur.



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K. GOVINDARAJAN THILAKAVADI, J.,

trp

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