



C.R.P.(MD) No.1626 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.1626 of 2022

and

C.M.P.(MD) No.7091 of 2022

1.Murugan

2.Vijayalakshmi

3.Indirani

... Petitioners

Vs.

1.Palaniammal

2.Subbammal

3.Velathal

4.Masimalai

5.Kanniyammal

6.Lakshmi

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908 to set aside the fair and decreetal order dated 29.06.2022 passed in I.A.No.104 of 2021 in O.S.No.304 of 2013 on the file of the Principal Subordinate Court, Palani.



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For Petitioners : Mr.T.Mohan, Senior Counsel
for Mr.P.Senthil

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 29.06.2022 passed by the Principal Subordinate Court, Palani in I.A.No.104 of 2021 in O.S.No.304 of 2013.

2. Despite notice being served on the respondents and the names of the respondents being printed in the cause list, there is no representation on behalf of the respondents.

3. The petitioners herein are the defendants in O.S.No.304 of 2013 before the Principal Subordinate Court, Palani. The suit was filed by the respondents herein for partition of suit schedule properties claiming 1/7th shares each and to declare the Sale Deeds executed by first petitioner's mother in favour of the second and third petitioners are null and void and for consequential relief of perpetual injunction. The suit appears to have been dismissed for non-prosecution on 25.04.2017.



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4. The learned senior counsel for the petitioners has narrated the events before the Court. He fairly submits that the respondents had I.As. *vide* S.R.Nos.5294/2017 & 5295/2017 to condone the delay of 33 days in filing application to set aside the order dated 25.04.2017 in O.S.No.304 of 2013. Thereafter, instead of numbering the above I.As., the respondents filed second I.A. by substituting the number of days in the affidavit on 12.04.2019 *vide* S.R.Nos.3324/2019 & 3325/2019 before the Sub Court, Palani and did not pursue same. Thereafter, the present application in I.A.No.104 of 2021 came to be filed on 05.03.2020 by substituting the last paragraph of the affidavit for condoning the delay of 1010 days which has been allowed by the Court *vide* impugned order dated 29.06.2022.

5. The learned senior counsel for the petitioners submits that although the learned Subordinate Judge, Palani has given categorical findings that the respondents have not reasonably explained the cause for delay, the learned Subordinate Judge, Palani has condoned the delay on the ground that the if the petition is disposed of, the dispute between the parties would remain unsettled. The relevant portion of the impugned order reads as under:-



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5. **Point** :

The petitioner has sought for to condone the delay for the reasons mentioned by the petition. This Court considered the petition and counter averments admittedly as mentioned by the respondents the petitioner has not reasonably explained the cause of delay. At the same time, the dispute involved in the suit is pertaining to the title in case if the petition is disposed of the dispute between the parties would remain unsettled. Hence considering the same for substantial justice and to avoid multiplicity of the proceedings this court allows the petition on condition that the cost of Rs. 10,000/- (Rupees Ten Thousand Only) is imposed on the petitioners.

6. The learned senior counsel for the petitioners drawn attention to the decision of the Hon'ble Supreme Court in **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation and another**, (2010) 5 SCC 459 and the recent decision of the Hon'ble Supreme Court in **Lingeswaran ETC. Vs. Thirunagalingam**, 2022 LiveLaw (SC) 227. He therefore submits that the impugned order dated 29.06.2022 passed by the learned Principal Subordinate Judge, Palani in I.A.No.104 of 2021 in O.S.No.304 of 2013 is unsustainable.



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7. In the light of law laid down by the Hon'ble Supreme Court, the condonation of delay of 1010 days in filing application to set aside the order dated 25.04.2017 *vide* impugned order dated 29.06.2022 cannot be allowed as cause of delay has not properly been explained. Considering the above, I am inclined to allow this Civil Revision Petition. Accordingly the impugned order dated 29.06.2022 in I.A.No.104 of 2021 in O.S.No.304 of 2013 is set aside and I.A.No.104 of 2021 in O.S.No.304 of 2013 is dismissed.

8. Accordingly, this Civil Revision Petition stands allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

22.06.2023

Internet: Yes/No

Index: Yes/ No

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To

The Principal Subordinate Court,
Palani.



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