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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.09.2023
Delivered on : 29.09.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.1690 of 2023

1.Periya Pandiammal
2.Nadu Pandiyammal
3.Chinna Pandiammal
4.Chellathai(Died)

... Petitioner/Petitioner/Plaintiffs

Vs.

A.Pandi

...Respondent/Respondent/
Defendant

Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to call for the records relating to the order passed in I.A.No.378 of 2022 in I.A.No.708 of 2011 in O.S.No.20 of 2006 on the file of the Principal District Munsif, Thirumangalam, Madurai District and set aside the same and consequently, allow the present civil revision petition.

For Petitioners :Mr.Sakthi Rao
For Respondent :Mr.N.Marimuthu

ORDER

This civil revision petition is filed as against the order passed in I.A.No.378 of 2022 in I.A.No.708 of 2011 in O.S.No.20 of 2006 on the file of the Principal District Munsif, Thirumangalam, Madurai District.



2. According to the revision petitioners/plaintiffs, they have filed a suit in O.S.No.20 of 2004 before the Principal District Munsif Court, Thirumangalam, Madurai District, for partition. The said suit was decreed in their favour. Against which, the respondent/defendant filed an appeal in A.S.No.120 of 2009, before the Camp Sub-Court, Thirumangalam. The said appeal suit was dismissed. Thereafter, the petitioners filed final decree application in I.A.No.708 of 2011, wherein Advocate Commissioner was appointed, who inspected the suit properties. In the meantime, the respondent preferred second appeal in S.A(MD)No.538 of 2012, against the judgment passed in the first appeal. Therefore, the petitioners did not pursue with the final decree application. This Court dismissed the second appeal on 02.08.2021. Pursuant to which, the petitioners/plaintiffs filed an application in I.A.No.378 of 2022 for passing of final decree, which was dismissed by the trial Court stating that the earlier application in I.A.No.708 of 2011 was dismissed for default. Hence, the present civil revision petition is filed.

3. The learned counsel appearing for the revision petitioners would submit that the Court below failed to see that the final decree application in I.A.No.708 of 2011 could not be proceeded due to the pendency of the second appeal. The learned counsel would further submit that the Court should be liberal, while considering the petition for condonation of delay.

The petitioners cannot be denied the benefit of decree passed in their favour



on the ground of delay in filing the application. The learned counsel would further submit that the trial Court should list the matter for taking steps under Order XX Rule 18 of C.P.C., soon after passing of the preliminary decree for partition and separate possession of the property, *suo motu* and without requiring initiation of any separate proceedings. Final decree proceedings can be initiated at any point of time and there is no limitation for initiating final decree proceedings.

4.To support his contention, he has relied upon the following decisions:

(i)In ***Collector, Land Acquisition, Anantnag and another-Vs-Mst.Katiji and Others*** reported in ***AIR 1987 Supreme Court 1353***.

(ii)In ***K.Subbarayudu and Others-Vs-The Special Deputy Collector (Land Acquisition)***, reported in ***2017(8)SCALE***.

(iii)In ***Kattukandi Edathil Krishnan & Ans.,-Vs-Kattukandi Edathil Valsan & Ors.***, reported in ***2022 LiveLaw(SC) 549***.

5.On the other hand, the learned counsel appearing for the respondent would submit that the petitioners, without giving any sufficient reasons, filed an application for condoning the delay of 1798 days and therefore, the same is not maintainable. Hence, the trial Court rightly dismissed the application and no calls for interference.



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

7. In the petition in I.A.No.378 of 2022, the revision petitioners stated that though he had filed an application for passing of final decree in I.A.No. 708 of 2011, an Advocate Commissioner was appointed, who inspected the suit property. By virtue of the second appeal in S.A(MD)No.538 of 2012 filed by the respondent, the same was not proceeded further as per the advise of the counsel. After the dismissal of the said Second Appeal, in order to pass a final decree in pursuant to the preliminary decree, the petitioners have moved an application to condone the delay in filing the application for restoration of the final decree application, which was dismissed. Further, applying the principles laid down by the Hon'ble Supreme Court in **2022 LiveLaw(SC) 549**, final decree proceedings can be initiated at any point of time. There is no limitation for initiating final decree proceedings. Either of the parties to the suit can move an application for preparation of a final decree. Moreover, in the above judgment, the Hon'ble Apex Court has categorically observed that the trial Court, suo motu without requiring initiation of any separate proceedings, after passing of the preliminary decree for partition and separate possession of the property, ought to have taken steps under Order XX Rule 18 of C.P.C.



8. That being so, the trial Court ought to have condoned the delay in filing the application to restore the final decree application. Therefore, the order passed in I.A.No.378 of 2022 in I.A.No.708 of 2011 in O.S.No.20 of 2006 is set aside and I.A.No.708 of 2011 is restored to file. The trial Court is directed to dispose the final decree application within a period of two months from the date of receipt of a copy of this order. Accordingly, the Civil Revision Petition is allowed. No costs.

29.09.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

To

1. The Principal District Munsif,
Thirumangalam,
Madurai District.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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