



CRP(MD)No.2241 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

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Selvaperumal (died)

1.Maariselvi

2.Saradhamani

... Petitioners

Vs

1.Sarawathi (died)

2.Kalirajan (died)

3.Kanagavalli

4.Venkatesh

5.Murugeshwari

6.Maheshwari

7.Selvaganesh

8.Sankareshwari

9.Ananthajothi

(Respondents 3 to 9 are brought on record as LR's of the deceased R1 and R2 vide Court order dated 10.03.2021 made in C.M.P(MD) Nos.6747 of 2020)

... Respondents



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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree made in I.A.No.218 of 2014 in O.S.No.102 of 1996 dated 22.07.2014, on the file of District Munsif Court, Kovilpatti.

For Petitioners : Mr.M.Thirunavukkarasu

For Respondents : No appearance

ORDER

When the case was called for hearing, Mr.M.Thirunavukkarasu learned counsel for the petitioner appeared and he was ready for arguments. However, the learned counsel for the petitioner submitted that the tapal has been returned as refused as against the 8th respondent and already the name of the 9th respondent is printed in the cause title. The records would reveal that R1 and R2 died.

2. The learned counsel for the petitioner vehemently stated that once notice, which is served on the respondent, has been refused, it would amount to effective service of notice and moreover, the *mala fide* nature of the respondents in dragging the issue is evident from refusing to receive the



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notice served on them and with the permission of this Court, the learned counsel for the petitioner submitted his arguments.

3. This Civil Revision Petition has been preferred as against the order made in I.A.No.218 of 2014 in O.S.No.102 of 1996 dated 22.07.2014 on the file of the District Munsif Court, Kovilpatti.

4. I.A.No.218 of 2014 was preferred by the respondents 1 and 2/defendants 1 to 2 before the trial Court. The civil revision petitioners herein are the plaintiffs in the original suit. The said IA was filed by the respondents 1 and 2 /defendants 1 and 2 to condone the delay of 5841 days in setting aside the *ex parte* decree, which was passed on 29.07.1997 in O.S.No.102 of 1996. Moreover, the learned counsel for the petitioner strongly argued that the respondents 1 and 2 /defendants 1 and 2 did not approach the trial Court with clean hands and the reasons for the delay of 5841 days was not convincingly explained from day to day basis and the only reason, which they put forth before the trial Court was that from 29.07.1997 that is the date on which the suit was set *ex parte* as against them, both of them together suffered from jaundice and they were taking



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treatment for the same. However, the learned counsel for the petitioner vehemently pointed out that for the question which was put forth to the respondents 1 and 2 / defendants 1 and 2 during the cross examination, they specifically admitted that they took treatment for jaundice only for the period of six months. Except for the first six months, the reason for the delay of 5841 days is not properly explained.

5. Heard the learned counsel for the petitioners carefully and perused the available materials on record.

6. A perusal of the typed set of papers would reveal that this suit was of the year 1993 and the same was numbered as O.S.No.69 of 1993 on the file of Sub Court, Thoothukudi. Thereafter, it was transferred to the District Munsif Court at Kovilpatti, where the suit was renumbered as O.S.No.102 of 1996. Though the suit is one for partition, the prolonged delay in disposal of the case right from the year 1993, without any doubt, would cause inordinate difficulty to the petitioner herein and moreover, the learned District Munsif has reasoned that since both the plaintiffs and defendants were the members of the same family at the imposition of the cost of



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Rs.10,000/- the learned District Munsif came to a conclusion that I.A.No. 218 of 2014 would be allowed and on that basis, I.A.No.218 of 2014 was allowed on 22.07.2014. As against the same, this civil revision petition has been filed and the matter is pending even before this Court for the past more than 9 years. Even after the pendency of 9 years, the respondents wantonly refused to receive the notice, which was served on them and that itself would show the hesitation in conducting the case properly.

7. However a verification from the lower Court record would reveal that a final decree has been passed in I.A.No.121 of 2014 in O.S.No.102 of 1996 on 17.10.2022. Though the learned counsel for petitioner vehemently argued, in view of the decree which has been passed by the trial Court, this Civil Revision Petition stands dismissed as infructuous. No costs.

01.03.2023

NCC : Yes/ No
Index : Yes / No
Internet : Yes / No
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L.VICTORIA GOWRI,J.

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