



C.R.P.(MD).No.369 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.02.2023

DELIVERED ON: 22.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.369 of 2023

Murthi

....Petitioner

Vs

1.Rajammal

2.Sumathi

3.Jamuna

4.Kala

5.Nathiya

6.Loganathan

7.Chandrasekar

8.Saravanan

9.Suresh

....Respondents



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PRAYER: Civil Revision Case is filed under Section 115 of Code of Civil Procedure, to call for the records relating to the impugned fair and decreetal order dated 15.03.2022 made in I.A.No.1 of 2021 in unnumbered A.S.No. of 2021 on the file of the Subordinate Judge, Manamadurai in O.S.No.22 of 2013 on the file of the District Munsif Cum Judicial Magistrate, Ilayangudi, set aside the same and allow this civil revision petition.

For Petitioner : Mr.V.S.Kumaraguru

For Respondents : Mr.T.Antony Arul Raj

ORDER

The 5th defendant in a suit for partition had filed a first appeal before the Subordinate Court, Manamadurai challenging the preliminary decree passed in the suit.

2.The trial Court has passed a decree on merits in O.S.No.22 of 2013 on 30.08.2017. The petitioner had filed the first appeal with a delay of 1375 days. To condone the said delay, the petitioner had filed I.A.No.1 of 2021 on the ground that due to business activities, he was in Kerala and he was also affected by Jaundice and hence, he could not file the first appeal in time. However, the First Appellate Court was not convinced with the reasons assigned by the petitioner and dismissed the condone delay



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application. Challenging the said order, the present civil revision petition has been filed.

3.The learned counsel for the petitioner has contended that due to business activities, the petitioner was residing in Kerala for a brief period and he was also affected with Jaundice. Therefore, he was taking treatment as an inpatient in Kerala. When he got cured, there was a lock down due to Covid-19. The petitioner contends that he returned home only on 15.09.2020 and thereafter, on the basis of the legal advice, he had filed the present appeal.

4.The learned counsel for the petitioner had further contended that the First Appellate Court has not properly appreciated the reasons assigned by the petitioner for condonation of delay and hence, he prayed for allowing the civil revision petition.

5.Per contra, the learned counsel appearing for the respondents had contended that the petitioner has not placed on record any document with regard to his avocation in Kerala or with regard to the admission in the Hospital as an inpatient. Hence, he prayed for sustaining the order passed by the First Appellate Court.



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6.I have considered the submissions made on either side and perused the materials available on record.

7.The revision petitioner had filed a first appeal challenging the preliminary decree passed in a partition suit. The said first appeal has been filed with a delay of 1375 days. The petitioner had contended that due to his avocation, he was in Kerala and he was affected with Jaundice. He had further contended that he was inpatient in the hospital for Jaundice. Thereafter, there was a lock down due to Covid-19. Hence, there is a delay of 1375 days. The petitioner has not produced any record to establish that he was an inpatient in the hospital for nearly 6 months. He had also not placed on record any document to show that he had his avocation in Kerala. The delay is more than 3 ½ years and the said enormous delay has not been properly explained.

8.Therefore, I do not find any infirmity in the order passed by the trial Court in dismissing the condone delay application. This Civil Revision Petition stands dismissed. No costs.

22 .02.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The Subordinate Judge,
Manamadurai

2.The District Munsif Cum Judicial Magistrate
Ilayankudi

3The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
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