



C.R.P.(MD).No.2466 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2466 of 2018

and

C.M.P(MD) No.10934 of 2018

B.Sundarammal

... Petitioner/Petitioner/3rd Defendant

-VS-

1. Arulrani

2. Sheela

3. Raja

4. Arulraja

... Respondents 1 to 4/Respondents/
Plaintiffs

5. Kulandai Sandanamary

... 5th Respondent/5th Respondent/
1st Defendant

Karalam (late)

6. K.Vanitha

7. K.Kannan

8. K.Suresh

... Respondents 6 to 8

(Respondents 6 to 8 as impleaded)

(Cause title accepted as per order dated 31.10.2018
in C.M.P(MD) No.10472/18 in C.R.P(MD) SR.28297/18)



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order passed in I.A.No.158 of 2014 in O.S.No.556 of 2009, dated 16.10.2015 by the learned I Additional Sub Judge, Madurai, Melur Camp.

For Petitioner : Mr.K.Bhaskaran

For Respondents : Mr.P.T.Ramesh Raja – for R1 to R4
: No appearance – for R5 to R8

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the order passed in I.A.No.158 of 2014 in O.S.No.556 of 2009, dated 16.10.2015 by the learned I Additional Sub Judge, Madurai, Melur Camp.

2. The petitioner is the 3rd defendant before the Court below and the respondents 1 to 4 are the plaintiffs.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.



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4. It appears that the plaintiffs have filed the suit for partition in respect of the suit property claiming 2/3rd share over the same. The petitioner/3rd defendant herein is the subsequent purchaser of the suit property.

5. It appears from the records that when the matter was pending for adjudication, an ex parte decree came to be passed on 25.06.2013. However, when an application filed by the petitioner/3rd defendant, there was a delay of 243 days. The reason for such delay is that she has engaged the counsel through Mediator. Since the petitioner was not able to contact the Mediator, and that when she personally contacted the counsel on record, she came to know about the ex-parte decree. In the meanwhile, there was a delay of 243 days.

6. The respondents/plaintiffs resisted the application stoutly and would state that the reasons assigned by the petitioner are not sufficient cause, and there was sufficient opportunity and notice was issued to the petitioner herein and it has also been received by the petitioner. Therefore, there is no justification in condoning the delay. Considering the submission of the respondents/plaintiffs, the trial Court has dismissed the delay condonation



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application. Aggrieved with the order, the petitioner/3rd defendant is before this Court.

7. The learned counsel for petitioner would submit that since this is a partition suit and that the defendants 1 and 2 who are the sharers have left the matter *exparte*, and the petitioner being the subsequent purchaser, is the contesting defendant, and that unless the ex-parte decree is set aside, she would be prejudiced. She would further submit that the delay is only because of the confidence reposed upon the Mediator, through whom, the counsel was engaged, and when the Mediator was beyond her contact and when she contacted the counsel on record, and when she came to know about the *exparte* decree, there was a delay of 243 days.

8. However, the learned counsel appearing for the respondents 1 to 4 would object the application, on the ground that the very revision petition under Article 227 of the Constitution India is not maintainable instead of Section 115 of C.P.C, and he would also further submit that the petitioner did not produce the fair and decretal order, and would submit that this also could be ground for dismissal.



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9. This Court has given anxious consideration to the submissions of the learned counsel for the petitioner and the learned counsel for the respondents 1 to 4.

10. The main objection of the learned counsel for the respondents 1 to 4 is that, the impugned order is not a fair and final order. But this Court disagree with the contention of the respondents counsel. In our case, while perusing the affidavit, the reasons stated by the petitioner is that she believed with the Mediator, and the Mediator has become beyond her reach later on. Therefore, considering the reasons stated by the petitioner and also considering the fact that the petition filed under Section 5 of the Limitation Act is elastic enough to do substantial justice, and also on the ground that the petitioner being a subsequent purchaser and the only contesting party, this Court is inclined to allow this application. However, due to the delay in filing such application, there would be some hardship to the respondents. Hence, this Court would like to compensate the hardship by imposing a costs.

11. In the result, this Civil Revision Petition is allowed on condition that the petitioner shall pay a sum of Rs.1,500/- (Rupees One thousand and



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Five Hundred only) to the respondents herein within the period of four weeks from the date of receipt of the copy of this order, failing which, the Civil Revision Petition stands dismissed without any further reference to the order of this Court. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

04.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The I Additional Sub Judge,
Madurai, Melur Camp.



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C.KUMARAPPAN,J.

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