



C.R.P(MD)No.393 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.393 of 2023

and

C.M.P(MD)No.1929 of 2023

S.Ramesh

... Petitioner/Petitioner/
2nd Defendant

Vs.

P.Easwari

... Respondent/Respondent/
Plaintiff

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records fair and decreetal order passed in I.A.No.665 of 2018 in O.S. No.1128 of 2012 dated 01.06.2019 on the file of the II Additional Sub Court, Trichy and set aside and allow the Civil Revision Petition.

For Petitioner : Mr.H.Arumugam



C.R.P(MD)No.393 of 2023

ORDER

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The present revision has been filed by the 2nd defendant in a suit for partition, challenging an order refusing to condone the delay of 817 days in filing an application under Order 9 Rule 13 of Code of Civil Procedure.

2. The 2nd defendant was set *ex parte* on 10.01.2011 and an *ex parte* decree came to be passed on 29.02.2016. The only reason assigned by the 2nd defendant for not approaching the Court in time is that their mother, namely the 4th defendant in the suit was taking care of the suit. After her death, the 2nd defendant could not take care of the suit.

3. A perusal of the typed set of papers indicate that the 4th defendant in the suit who is the mother of the 2nd defendant had passed away on 26.08.2018. The 3rd defendant has entered into the box on 18.06.2013, wherein he has admitted that mother is not keeping in good health and only the sons are taking care of the suit. Therefore, it is clear that the reason assigned by the 2nd defendant for not filing an application to condone the delay in setting aside the *ex parte* decree is not factually



C.R.P(MD)No.393 of 2023

correct. That apart, the 3rd defendant is already contesting the suit. Since the 2nd defendant has not come out with proper reason for condoning the delay of 817 days, the trial Court was right in dismissing the said application.

4. In view of the above said facts, this Court does not find any reason to interfere in the order passed by the trial Court. Hence, this Civil Revision Petition stands Dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.02.2023

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

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To

- 1.The II Additional Sub Court,
Trichy.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.393 of 2023

R.VIJAYAKUMAR ,J.

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