



C.R.P(MD)No.321 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.321 of 2023

and

C.M.P(MD)No.1526 of 2023

Arulmaniammal

... Petitioner/Appellant/
5th Defendant

Vs.

1.Vasumathi

2.Lakshmi

3.Murugan

4.Kuthalinga Nadar

... Respondents/Respondents/
Plaintiff & Defendants 2-4

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the order, dated 11.03.2022 passed in I.A.No.1 of 2021 in A.S.SR.No.7576 of 2021 on the file of the Principal District Court, Tirunelveli.

For Petitioner : Mr.I.Robert Chandrakumar



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ORDER

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The present revision petition has been filed by the appellant in a first appeal challenging an order refusing to condone the delay of 3057 days in filing a first appeal.

2. A perusal of the affidavit indicates that she is a purchaser from the 1st defendant and the 1st defendant was conducting the case on behalf of the 5th defendant/appellant. When the 1st defendant had passed away, the petitioner was unable to contact her counsel and only when she received notice in the final decree proceedings, she came to know about the passing of a preliminary decree. However, the first appellate Court has dismissed the application on the ground that it is the duty of the 5th defendant to enquire about the progress of the case and they cannot blame the deceased 1st defendant or her counsel for not informing about the passing of the preliminary decree.

3. Considering the extent of delay and the reasons assigned by the appellant, this Court is not inclined to interfere in the order passed by the first appellate Court in dismissing the application to condone the delay.



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4. A perusal of the preliminary decree indicates that the plaintiff has been allotted half share in the 1st schedule of property. Now, the 5th defendant claims that she has purchased 24 cents in the 1st schedule property from the 1st defendant in Survey No.311/5D. Therefore, the petitioner could very well work out her remedy in the final decree application by getting the same allotted in favour of the 1st defendant, so that it could be re-allotted in favour of the 5th defendant. The first appellate Court may consider the request of the 5th defendant on merits and in accordance with law, for allotting the said 24 cents in favour of the 1st defendant, so that it could be allotted in favour of the 5th defendant.

5. With the said observations, this Civil Revision Petition stands disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

02.03.2023

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

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To

- 1.The Principal District Court,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
C.R.P(MD)No.321 of 2023

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