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C.R.P.No.122 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P. No.122 of 2021

Mary Stella W/o. Joy Amalraj

... Petitioner

vs.

1. Augustine Mary W/o. Late Chinnappan
2. C. Anthonysamy S/o. Late Chinnappan
3. C. Lawrence S/o. Late Chinnappan
4. A. Daisy Amalarani D/o. Late Chinnappan
5. C. Selvaraj (died) S/o. Late Chinnappan
6. V. Sebastian S/o. Late Chinnappan
7. C. John Peter S/o. Late Chinnappan
8. Pauli W/o. Late C. Selvaraj
9. Minor Reena D/o. Late C. Selvaraj
10. Minor Salon S/o. Late C. Selvaraj

[Respondents 8 to 10 brought on record as legal representatives of the deceased / 5th respondent and the 8th respondent represented the 6th and 7th respondents as mother and guardian vide order dated 07.03.2024 in C.M.P. Nos.19729 & 19732 of 2021 and C.M.P. No.5541 of 2024 respectively]

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 26.02.2020 passed by the learned District Munsif cum Judicial Magistrate,



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Kattumannarkoil in I.A. No.168 of 2019 in O.S. No.96 of 2014.

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For Petitioner : Mr. A. Muthukumar

For Respondents : Mr. K. Magendra Varman [for R8]
R1 & R2 – Served – No appearance.
R5 Died
R3, R4, R6 and R7 – Not ready in
notice
R9 & R10 minors represented by R8.

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner to condone delay of 1028 days in filing a petition to restore the suit.

2. The petitioner herein filed a Suit for partition claiming 1/8 share in the suit property. The respondents in the suit remained exparte. When the matter was posted for recording exparte evidence, the petitioner failed to appear and hence the Suit was dismissed for default on 21.04.2016. Thereafter, the petitioner filed an application to restore the same with petition to condone delay of 1028 days. The said application was dismissed by the Trial Court. Aggrieved by the same, the petitioner is before this Court.



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3. Heard the arguments of the learned counsel appearing for the petitioner.

4. It is seen from the impugned order that the respondents / defendants were set exparte in the main suit and the suit was dismissed for default when it was posted for recording exparte evidence of the plaintiff. Since the respondents were set exparte in the main suit, notice to the respondents is not necessary. It is also seen even in the condone delay petition, the respondents remained exparte. Therefore, notice to the respondents is not necessary. In fact, in earlier occasion, this Court ordered notice and it was served on the respondents 1, 2 and 8. Even though notice is not served on some of the respondents, in view of the fact that they remained exparte in the main suit as well as in the condone delay petition, this Court is inclined to dispose of the revision petition on merits.

5. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that the Suit was dismissed for default on 21.04.2016 and the petitioner was affected severely by Jaundice at the relevant point of



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time and hence he could not appear before the Court. It was further submitted that after recovery from Jaundice, he contacted his counsel and had taken necessary steps for restoration of the Suit.

6. The main prayer in the Suit is partition. It is settled law that cause of action for partition suit is a continuous one and hence dismissal of the Suit will not prevent the petitioners from filing another Suit. As mentioned earlier, all the respondents/defendants were set exparte in the main Suit. Therefore, bar under Order 9 Rule 8 read with Rule 9 of C.P.C. is not applicable. In such circumstances, there will not be any impediment for the petitioner to file a fresh Suit as on today.

7. In view of the same, this Court is inclined to take a liberal view of the matter and to give an opportunity to the petitioner to conduct the case on merits.

8. Therefore, the impugned order dated 26.02.2020 passed by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil in I.A.



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No.168 of 2019 in O.S. No.96 of 2014 is set aside. The Civil Revision

Petition is allowed on payment of cost of Rs.2,000/- to the Hon'ble Chief

Justice Relief Fund within a period of **two (2) weeks** from the date of receipt of a copy of this order. If the petitioners failed to pay the cost within a time stipulated, then the Civil Revision Petition stands automatically dismissed.

On payment of cost by the petitioner within a time stipulated, the Civil Revision Petition stands allowed and the Trial Court can take up the petition for restoration of Suit and dispose of the same in accordance with law. No costs.

14.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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S.SOUNTHAR, J.

mjs

To

The District Munsif cum Judicial Magistrate, Kattumannarkoil.

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