



C.R.P.Nos.280, 287 & 288 of 2022
and C.M.P.Nos.1346, 1365, 1366 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.Nos.280, 287 & 288 of 2022
and C.M.P.No.1346, 1365, 1366 of 2022

C.R.P.No.280 of 2022

Krishnasamy

.. Petitioner

Vs.

Kasi Viswanathan (died)

- 1.Anusiya
- 2.Vanaja
- 3.Vanitha
- 4.Kavitha
- 5.Sidhanathan
- 6.Nandhakumar
- 7.Sekar
- 8.Masilamani
- 9.Ganesan
- 10.Valliammal
- 11.Rajathi
- 12.Seerangayammal

.. Respondents

C.R.P.No.287 of 2022

Sidhanathan

.. Petitioner

Vs.



C.R.P.Nos.280, 287 & 288 of 2022
and C.M.P.Nos.1346, 1365, 1366 of 2022

Kasi Viswanathan (died)

1. Anusiya
2. Vanaja
3. Vanitha
4. Kavitha
5. Nandhakumar
6. Krishnasamy
7. Sekar
8. Masilamani
9. Ganesan
10. Valliammal
11. Rajathi
12. Seerangayammal

.. Respondents

C.R.P.No.288 of 2022

Nandhakumar

.. Petitioner

Vs.

Kasi Viswanathan (died)

1. Anusiya
2. Vanaja
3. Vanitha
4. Kavitha
5. Sidhanathan
6. Krishnasamy
7. Sekar
8. Masilamani
9. Ganesan
10. Valliammal
11. Rajathi
12. Seerangayammal

.. Respondents



C.R.P.Nos.280, 287 & 288 of 2022
and C.M.P.Nos.1346, 1365, 1366 of 2022

Prayer in C.R.P.No.280 of 2022: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and final order passed in I.A.No.398 of 2018 in O.S.No.458 of 2013 dated 27.10.2021 on the file of the First Additional Subordinate Judge, Erode.

Prayer in C.R.P.No.287 of 2022: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and final order passed in I.A.No.396 of 2018 in O.S.No.458 of 2013 dated 27.10.2021 on the file of the First Additional Subordinate Judge, Erode.

Prayer in C.R.P.No.288 of 2022: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and final order passed in I.A.No.397 of 2018 in O.S.No.458 of 2013 dated 27.10.2021 on the file of the First Additional Subordinate Judge, Erode.

In all C.R.Ps

For Petitioner	: Mr.K.S.Jeyaganesan
For R1 to R4	: Mr.T.Gowthaman Senior Counsel for Mr.B.Pachaiyappan
For R5 to R7, R9, R10 & R12	: No Appearance
For R11	: Mr.V.S.Kesavan



C.R.P.Nos.280, 287 & 288 of 2022
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ORDER

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These Civil Revision Petitions have been filed seeking to set aside the fair and final order passed in I.A.Nos.396 to 398 of 2018 in O.S.No.458 of 2013 dated 27.10.2021 on the file of the First Additional Subordinate Judge, Erode.

2.The case of the petitioners is that the suit has been filed by the 1st respondent/Kasi Viswanathan and he is the brother of the defendants 1, 4 and 7 viz., Sidhanathan, Sekar and Valliammal. The suit has been contested only by the 8th defendant/Rajathi. All other defendants were remained ex-parte throughout the proceedings and the preliminary decree also came to be passed on 18.03.2016. Thereafter, when the final decree proceeding is pending, the application has been filed by the petitioners herein/ 1st defendant and his two sons, to condone the delay of 705 days in filing the application to set aside the ex-parte decree on the ground that they are working as employees in the private shops and on 27.10.2014, they were not in a position to contact their counsel and to file the written statement. Further, due to their health issues, they could not produce the documents in



C.R.P.Nos.280, 287 & 288 of 2022
and C.M.P.Nos.1346, 1365, 1366 of 2022

time and they met the counsel only on 29.11.2016. Further, the plaintiff also assured them that he would withdraw the case and therefore, the revision petitioners does not contest the case. Hence, there occurred a delay of 705 days. However, the Court below dismissed the condone delay applications. Hence, the present Civil Revision Petition.

3.Learned counsel appearing for the petitioners vehemently argued that the delay has been properly explained and length of the delay is not a matter and only the merits of the case have to be considered and hence, he prayed to condone the delay.

4.Mr.T.Gowthaman, learned Senior Counsel appearing for the respondents 1 to 4 and the learned counsel appearing for the 11th respondent opposed the submissions made by the learned counsel for the petitioners on the ground that the suit was disposed of on merits and thereafter, there was no appeal preferred by any of the respondents. When the plaintiff himself not taken any steps for final decree in terms of preliminary decree, the 8th defendant filed an application in I.A.No.784 of 2016, for passing of final



C.R.P.Nos.280, 287 & 288 of 2022
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decree. The Court has also appointed Advocate Commissioner to divide the suit property. At that time, the petitioners has come up with the applications to condone the delay without proper reasons for the delay. Therefore, the Trial Court has rightly rejected the said condone delay application. The learned counsel for the defendants 1 to 3 also appeared in the final decree proceedings. After entering appearance in the final decree proceedings, the condone delay applications came to be filed after 1 ½ years, which is unsustainable and hence, they prayed for the dismissal of the present Civil Revision Petition.

5.Heard the learned counsel appearing for the petitioners, Mr.T.Gowthaman, learned Senior Counsel appearing for the respondents 1 to 4 and the learned counsel appearing for the 11th respondent and perused the materials available on records.

6.Considering the above submissions, this Court is of the view that the suit has been filed for partition among brothers and no specific defense has been raised in this regard. It is not the case of the petitioners that they



C.R.P.Nos.280, 287 & 288 of 2022
and C.M.P.Nos.1346, 1365, 1366 of 2022

acquires right by way of testamentary succession. They were spectator throughout the entire proceedings without having any defense. As a matter of right, one cannot be allowed to un-settle the settled issue. In the present case, the final decree proceedings is likely to be passed. The petitioners herein have also entered appearance in the final decree proceeding and filing applications to condone delay after a period of 1 ½ years shows that the petitioners have filed the petitions only to drag on the process of final decree proceedings. Hence, this Court does not find any merits in the present case.

7. Accordingly, these Civil Revision Petitions stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

05.11.2024

rst
Index : Yes/No
Internet: Yes/No
Speaking/Non-Speaking Order

To:
The First Additional Subordinate Judge,
Erode.

7/8



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C.R.P.Nos.280, 287 & 288 of 2022
and C.M.P.Nos.1346, 1365, 1366 of 2022

N.SATHISH KUMAR, J.

rst

C.R.P.Nos.280, 287 & 288 of 2022
and C.M.P.No.1346, 1365, 1366 of 2022

05.11.2024