



CRP No.707 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.707 of 2024

Marappa Gounder

... Petitioner

Vs.

1.Nachimuthugounder @ Chiinasamy

2.Samiyathal

Thulasimani (died)

Palanisamy (died)

3.Vasanthamani

4.Sivasakthi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 07.12.2023 in I.A.No.210 of 2020 in unnumbered AS in CFR No.3569 of 2020, by the Principal District Judge, Erode.

For Petitioner

: Mr.Sharath Chandran

For Respondents

: Ms.S.Kaithamalai Kumaran
for first respondent caveator



CRP No.707 of 2024

WEB COPY

ORDER

The civil revision petition is filed to set aside the order dated 07.12.2023 in I.A.No.210 of 2020 in unnumbered AS in CFR No.3569 of 2020, by the Principal District Judge, Erode.

2. The petitioner is the plaintiff and the respondents are defendants in OS No.74 of 2005 on the file of the Subordinate Judge, Egmore. After the trial court passed a final decree, the first respondent had assured for compromise to the petitioner, considering the family relationship and to avoid misunderstanding and continue smooth relationship. On the request made by the first respondent, the petitioner had not further proceeded with the case and decided to maintain status quo and enjoy the property as it was. Hence, he has not filed any appeal. In the first week of November, 2019, the petitioner has received a notice from the Court in IA No.2 of 2019 for final decree petition filed by the first respondent. Thereafter, the petitioner has immediately filed the instant application in IA No.210 of 2020 to condone



CRP No.707 of 2024

WEB COPY

the delay of 3056 days in filing the appeal suit against the preliminary decree. It was dismissed by the first appellate court by passing the impugned order dated 07.12.2023, on the ground that sufficient cause is not shown in the affidavit. Aggrieved by the said order, the petitioner has filed the present civil revision petition.

2. Learned counsel counsel for the petitioner submits that the preliminary decree on the face of it is illegal for the reason that father had died in the year 1950 before coming into force of the Hindu Succession Act. In such circumstances, the petitioner's mother Ramayee was allotted 1/3rd share. She is not entitled for that. Apart from that, in the written statement itself, the sixth defendant admitted that the plaintiff, first defendant and the sisters are entitled for 1/3rd share in the item 1 to 4 in the plaint schedule properties. In the decree, the trial court passed preliminary decree and for the plaintiff and the first defendant allotted 4/9th share and for the defendants 4 to 6 each allotted 1/9th share that is perse illegal and it is miscalculated. On that ground, statutory appeal has to be filed. Due to the



CRP No.707 of 2024

compromise between the family members, he has not filed appeal. Only after the filing of the final decree petition, the petitioner has filed the appeal suit with sufficient reasons to condone the delay of 3056 days. Therefore, delay has to be condoned. To support his argument, he relied upon the judgment passed by this Court in the case of *Ayyasamy vs Shanmugam reported in (2023) 6 ML 164*.

3. Learned counsel for the respondent caveator objected this Revision and supported the order passed by the first appellate court. Further, contended that the petitioner has not made any evidence or proof to show that there was compromise between the parties to continue the status quo and under such circumstances, he had not filed appeal immediately, cannot be accepted. The preliminary decree was passed on 10.08.2011 but his application is filed after ten years with a delay of 3056 days that too not properly explained. Under such circumstances, the delay cannot be condoned. Hence, the revision is not maintainable and seeking to dismiss.



CRP No.707 of 2024

WEB COPY

4. Heard the parties and perused the materials available on record.

5. On a perusal of records, the fact reveals that the petitioner is the plaintiff in OS No. 174 of 2000. The preliminary decree was passed on 10.08.2011. He obtained the certified copy of the judgment on 14.10.2011. It is admitted by the petitioner in paragraph 5 of its affidavit that though he obtained the certified copy of the judgment on 14.10.2011, he had not filed an appeal suit against the judgment and decree passed against him. The reason for that according to him was that respondents 4 to 6 came to him and considering the family relationship, had requested him to bury the misunderstanding and continue the relationship as before and also respondents 4 to 6 had said him that they are not very particular about getting the property in pursuance of the judgment and they want to continue their relationship and requested to maintain status quo. Therefore, the appeal was not filed by the petitioner immediately. To support this allegation, the petitioner has not let any proof before the first appellate court to condone the delay. The first appellate court recorded that the petitioner has not assigned



CRP No.707 of 2024

WEB COPY

any valid reason and sufficient cause to condone the delay. Further, it is noticed that apart from the reason stated in paragraph Nos.5 and 6 of the affidavit, there is no proof to show that the respondents 4 to 6 had approached him and requested him to continue their relationship and to maintain status quo after judgment. In these circumstances, the reason stated in the affidavit in paragraph Nos.5 and 6 is not a sufficient cause to condone the delay of 3056 days in filing the appeal suit as against the judgment and decree passed in OS No.174 of 2005 on 10.08.2011 and he had obtained certified copy of the judgment on 14.10.2011. The reason stated by the petitioner in that affidavit that on the request of the respondents, he has not filed any appeal, cannot be accepted. The judgment relied upon by the petitioner is not helpful to support the case of the petitioner. Therefore on fact, the principle stated in the judgment relied on by the petitioner is not in support of his argument. Therefore, they are not helpful to him. In the absence of any sufficient cause to condone the delay of 3056 days in filing the appeal, the first appellate court has rightly dismissed the said application, as there is no bonafide reason on the part of



CRP No.707 of 2024

the petitioner to condone the delay. I find no reason to interfere with the impugned order passed by the first appellate court. There is no merit in the revision. Hence, the civil revision petition is dismissed. Liberty is given to the petitioner to approach the trial court with regard to allotment of share in consistent with the admission of the defendant in the written statement. There shall be no order as to costs.

11.03.2024

Index: Yes/No
Internet: Yes/No
mrn

To
The Principal District Judge, Erode.



WEB COPY



CRP No.707 of 2024

V.SIVAGNANAM, J.

(mrn)

CRP No.707 of 2024

11.03.2024

8 of 8