



C.R.P.No.3435 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.3435 of 2024

1.G.Pradeep
2.G.Malathi
3.G.Divya

.. Petitioners

Vs.

1.V.R.Natarajan
2.K.Balasubramaniam
3.B.Senthil
4.B.Raesh

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order passed in I.A.No.838 of 2016 in O.S.No.429 of 2008 dated 10.08.2022 on the file of the II Additional Subordinate Court Judge, Coimbatore.

For Petitioners : Mr.K.Mohanamurali

For R3 & R4 : Mr.M.Guruprasad



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ORDER

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This Civil Revision Petition has been filed seeking to set aside the order passed in I.A.No.838 of 2016 in O.S.No.429 of 2008 dated 10.08.2022 on the file of the II Additional Subordinate Court, Coimbatore.

2.The brief facts of the case are as follows:

2.1.Originally, a suit has been filed by the petitioners seeking for declaration to declare the Will dated 14.06.2004 is true, valid and genuine. The suit properties are bequeathed by Gnanambal wife of Nataraja Vudaiyar, under the Will dated 14.06.2004. Gnanambal and Nataraja Vudaiyar had four sons and two daughters. The suit has been filed by the brothers against their sisters. It is pleaded in the suit that the share of the deceased first son viz., Soundarajan, devolved on his mother Gnanambal. Similarly, the defendants in O.S.No.429 of 2008 have filed suit in O.S.No.498 of 2015 against the petitioners herein for the same issue, which is admittedly pending. However, the suit in O.S.No.429 of 2008 dismissed for default on 21.08.2013. Therefore, the application in I.A.No.838 of 2016 has been filed to condone the delay of 64 days in filing application to restore



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the suit in O.S.No.429 of 2008. However, the said application has been dismissed on the ground that the delay has been calculated by the date of knowledge of the dismissal of the suit instead of the date of dismissal order and the actual delay is 1100 days and not 64 days. Therefore, the reason for the delay has not been explained properly.

3.Learned counsel appearing for the petitioners submitted that though the order of the trial Court is legally valid, the fact remains that the suit has been filed in respect of the Will dated 14.06.2004 and other un-registered Will with regard to the immovable properties. Admittedly, the other suit in O.S.No.498 of 2016 is pending with the same issue. Hence, he prayed to set aside the order made in I.A.No.838 of 2016 in O.S.No.429 of 2008 dated 10.08.2022.

4.Learned counsel appearing for the respondents 3 and 4 submitted that the Court below, after considering the application filed for condonation of delay, has rightly dismissed the same since the delay was not properly explained and hence, he prayed for dismissal of the present petition.



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5. Upon hearing, this Court is of the view that in order to give a quietus to the issue, liberal approach has to be adopted to condone the delay. Though the delay has been wrongly calculated, considering the fact that the suit filed by the defendants is still pending with the same issue, this Court is inclined to condone the delay.

6. Accordingly, the order passed in I.A.No.838 of 2016 in O.S.No.429 of 2008 dated 10.08.2022 is set aside and the suit in O.S.No.429 of 2008 is restored to file. Since the issues involved in both the suits are common in nature, it is appropriate to direct the trial Court to conduct a joint trial in both the suits. Accordingly, the suit in O.S.No.429 of 2008 pending on the file of the II Addl.Sub ordinate Court, Coimbatore shall be transferred to the file of the I Addl.District Judge, Coimbatore and clubbed with the suit in O.S.No.498 of 2015. The I Addl.District Judge, Coimbatore is directed to conduct a joint trial in both the suits and dispose of the same within a period of six months from the date of receipt of a copy of this order.

7. In the result, the Civil Revision Petition is disposed of. No



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

To:

The II Additional Subordinate Court Judge,
Coimbatore.

N.SATHISH KUMAR, J.

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