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C.R.P.No.4531 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2024

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THE HON'BLE JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.4531 of 2024

1. Kalliyammal
2. Kumar
3. Gubendhiran

... Revision Petitioners/Petitioners/Defendant Nos.8 to 10

-VS-

Perumal (Died)

1. Kalyani
2. Kamatchi
3. Valli
4. Rajeshwari
5. Kesavan

... Respondents/Respondents/Plaintiffs

Prayer: Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decretal order passed by the District Munsif Court, Uthangrai, Krishnagiri District dated 13.12.2023 made in I.A.No.2 of 2021 in O.S.No.101 of 2006 and to allow the Interlocutory Application as prayed for.

For Petitioners : Mr.J.Pradeep

For Respondents : Mr.Abhijith



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ORDER

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A challenge has been made to the impugned order dated 13.12.2023, rejecting the application in I.A.No.2 of 2021 in O.S.No.101 of 2006 on the file of the District Munsif, Uthangrai, Krishnagiri District, declining to condone the delay of 1988 days in filing application to set aside the exparte decree dated 11.06.2015.

2. A suit in O.S.No.101 of 2006 was originally filed by the plaintiffs for partition of suit properties into 4 equal shares by metes and bounds and to allot 1/4th share to the plaintiffs. The 5th defendant, who is the husband of the 1st revision petitioner and father of other revision petitioners herein is the purchaser of the property from the 1st defendant. The stand of the 1st defendant was that the suit property sold to the 5th defendant is a self acquired property and during the pendency of the suit, the 5th defendant died and the revision petitioners were brought on record as legal representatives. Thereafter, they remained exparte and the suit came to be decreed on 11.06.2015.



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3. The revision petitioners had filed I.A.No.2 of 2021 in O.S.No.101 of 2006 to condone the delay of 1988 days in filing application to set aside the *ex parte* decree, stating that they came to know about the *ex parte* decree, when a notice in the final decree application was served upon them and after the death of the 5th defendant, neither notices nor summons were served, which was the sole reason for their non appearance before the Court.

4. The Trial Court, on hearing both parties, held that several notices were issued to the petitioners and it is not the case of the petitioners that they are not residing in the particular address. Further, Trial Court came to the conclusion that they were already recognized as legal representatives of the 5th defendant and the reason assigned by the petitioners are not sufficient to condone the delay and thus, dismissed the application. Challenging the same, the present Civil Revision Petition has been filed.

5. Learned counsel for the petitioners submitted that though notices were served, while recognizing the petitioners as legal



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representatives, no summons had been served thereafter and therefore, they should be given an fair opportunity to contest the suit. He further submitted that the property purchased by the 5th defendant is a self acquired property of the 1st defendant and hence, the Trial Court ought to have given liberal approach in condoning the delay.

6. Learned counsel for the respondents contended that on account of non-satisfactory explanations / cogent reasons given by the petitioners to condone the huge delay in terms of the dictum laid down by the Supreme Court in the case of *Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649*, the Trial Court rightly dismissed the application, which does not warrant any interference by this Court.

7. I have perused the material documents available on record

8. Insofar as condonation of delay is concerned, it is a well settled law that if the party has shown sufficient cause for non prosecuting the case before the Court of Law, irrespective of the length of the delay, the



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Court can lean in favour of the party for advancement of the substantial justice, as otherwise, no leniency can be shown to the party merely for the sake of condoning the delay in the guise of extending liberal approach, even if the delay is very meagre. In this case, the application to condone the delay could have been contested by the revision petitioners, when they had received notices after the death of the 5th defendant, as the wife and two sons of the 5th defendant had been brought on record. While taking steps to bring them as parties, applications in I.A.Nos.239 of 2011 and 699 of 2011 have been filed and in one such application, namely, I.A.No.699 of 2011, notice had been served to the 1st revision petitioner / Kalliyammal, who is none other than the mother of other revision petitioners 2 and 3 and her signature had also been endorsed in the application, which is available in the record. The notice sent to the 2nd revision petitioner had been refused to be received and therefore, it cannot be said that revision petitioners have no knowledge about the proceedings.

9. In the given case, refusal to receive the notice by the 2nd revision petitioner itself is sufficient to infer that the explanation offered by



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the petitioners to condone the delay of 1988 days cannot be countenanced, as it is only an afterthought. Moreover, this Court also verified the document and found that 1st revision petitioner / Kalliyammal affixed her signature in one particular notice and received the same.

10. In such view of the matter, in the absence of sufficient explanations adduced by the revision petitioners, this Court finds no ground whatsoever to lean in favour of the revision petitioners and the revision petitioners will step into the shoes of the 1st defendant and they are entitled to receive whatever shares allotted to the 1st defendant as per law, which can be worked out by the revision petitioners before the appropriate forum in the manner known to law.

11. Finding no valid reasons to interfere with the order of the Trial Court, this Civil Revision Petition is dismissed. No costs.

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