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C.R.P.(NPD).No.2005 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.07.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD).No.2005 of 2023 &
C.M.P.No.12586 of 2023

Shanthi (Deceased)

1.Saranya

2.Sunil Kumar

3.G.Sathiya

... Petitioners

-Versus-

1.Gunasundari

2.Murugan

3.Sarala

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decretal order dated 07.02.2023 in I.A.No.1 of 2022 in A.S.No.28 of 2014 pending before Principal District Judge, Chengalpattu, Kancheperam.

For Petitioners : Mr.D.Vivekanandan

For Respondents : Mr.Dhilip Roshan O.G.

ORDER

This civil revision petition arises against the order passed by the learned Principal District Judge, Chengalpet in I.A.No.1 of 2022 in A.S.No.28 of 2014



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dated 07.02.2023.

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2. The application in I.A.No.1 of 2022 was filed to condone the delay of 1395 days in filing an application to restore the appeal suit, which had been dismissed for default on 02.11.2017.

3. The case of the plaintiffs is that they are entitled to 15/18th share in the suit schedule mentioned property. This suit for partition was presented in 2009 and was taken on file as O.S.No.73 of 2009 by the learned Subordinate Judge at Madhurandhakam. The suit was decreed on 25.07.2014.

4. Aggrieved by the same, a regular appeal had been presented in time in A.S.No.28 of 2014 before the District Court, Chengalpet.

5. Pending the appeal, the appellant namely Shanthi, who was the first defendant in the suit, is said to have fallen sick with dengue. Subsequently, she succumbed on 09.04.2018. The defendants 2 to 4, who are the civil revision petitioners, are her legal heirs. They would plead that on account of the fact that their mother had passed away, they were under a shock and could not contact their counsel. Subsequently, they contacted their counsel who informed that he stopped practicing in Chengalpet and he confined his practice only to Madhuranthakam. Therefore, they engaged a new counsel by name Mr.Ramu, who also passed away due to COVID-19. Thereafter, they engaged a new



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counsel, who filed an application to restore.

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6. The respondents did not appear before the appellate court despite being served with summons. Therefore, the learned Appellate judge took up the petition for disposal. She came to a conclusion that the appeal had been dismissed for default in November 2017 and COVID-19 spread across the world only in March 2020. Since there was no explanation for condoning the period between 2017 and 2020 she refused to condone the delay and dismissed the petition.

7. Aggrieved by the same, the present civil revision petition has been filed.

8. Heard Mr.D.Vivekanandan, learned counsel for the petitioners and Mr.Dhilip Roshan O.G. for the respondents.

9. A perusal of the petition in I.A.No.1 of 2022 makes it clear that the petition to restore was filed only in December 2021. By virtue of the order of the Supreme Court in *Suo Motu W.P(Civil). No.3 of 2020*, the time period from 15.03.2020 to 30.04.2022 stood excluded by virtue of COVID-19. This leaves the period from November 2017 till March 2020 to be explained. The petitioners have pleaded that on account of the fact that the mother had passed away on 09.04.2018, they could not concentrate on the litigation. This reason



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sounds plausible. Apart from that, they also pleaded that they engaged a counsel who refused to conduct the matter and subsequently, they engaged a new counsel who also succumbed to COVID-19.

10. Since important issues relating to immovable property are involved and the reason given for condoning the delay being sufficient namely the death of the mother/first defendant as well as that of the counsel due to COVID-19, it is better that the plaintiffs get a decree on the merits after the disposal of the appeal. Therefore, I am inclined to set aside the order passed by the learned Principal District Judge at Chengalpet in I.A.No.1 of 2022 in A.S.No.28 of 2014 dated 07.02.2023 on the condition that the petitioners pay to the plaintiffs/respondents in this revision a sum for Rs.50,000/- within a period of four weeks i.e., on or before 06.08.2024.

11. It is made clear that in case the cost is not paid, then the benefit of this order will not enure to the petitioners. In other words, the civil revision petition shall automatically stand dismissed without further notice to this Court, it is made clear that no application for extension will be entertained.

Consequently, the connected miscellaneous petition is closed.

09.07.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The Principal District Judge, Chengalpattu, Kanchepuram.



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V.LAKSHMINARAYANAN, J.

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