



C.R.P.No.2040 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2040 of 2021

and

C.M.P.No.15511 of 2021

1.K.Natrayan
2.N.Senthil Kumar
3.N.Karthick Kumar

... Petitioners

Vs.

Jegathambal (died)
1.K.Mallika
2.N.Chinnasamy
3.N.Alamelu Mangai
4.N.Devarajan
5.Indian Overseas Bank
Rep by the Senior Manager,
Coimbatore District Court Branch,
District Court Complex,
Coimbatore.

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decretal order dated 12.07.2021 passed in I.A.No.370 of 2020 in AS.C.F.R.No.2489 of 2020 on the file of Principal District Judge at Tiruppur.



C.R.P.No.2040 of 2021

For Petitioners : Mr.K.Myilsamy
For respondents 1 to 4 :Mr.K.Govi Ganesan

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioners seeking to condone the delay of 248 days in filing the appeal.

2. The respondents herein filed a suit seeking partition. The petitioners herein who were arrayed as defendants 1 to 3 in the suit resisted the claim of the respondents mainly by relying on Will allegedly executed by father of the 1st petitioner namely Krishnasamy Asari. The said suit was decreed as prayed for on 04.09.2019. Aggrieved by the same, the petitioners preferred first appeal along with petition to condone the delay in filing appeal on 08.06.2020. In the affidavit filed in support of the petition to condone the delay of 248 days in filing appeal, it was stated by the petitioners that 3rd petitioner was suffering from Jaundice at the relevant point of time and he was advised to take complete bed rest. Therefore, it was stated that they could not contact the counsel and take steps to file appeal immediately. It was further stated that



from 25.03.2020, there was a total lockdown due to Covid-19 Pandemic and hence, the appeal could be presented only on 08.06.2020.

3. The First Appellate Court dismissed the condone delay petition on the ground that respondents produced facebook photographs to establish that 3rd petitioner was healthy at the relevant point of time. The First Appellate Court also said that the 3rd petitioner participated in a marriage function on 13.03.2019.

4. The suit was decreed only on 04.09.2019 and therefore, participation of 3rd petitioner in a marriage function on 13.03.2019 is no way relevant to decide condone delay petition. However, the Court below relied on certain facebook photographs allegedly produced by the respondents dated 08.12.2019, 13.02.2019, 02.09.2019, 20.02.2019 and 07.07.2019. Except the photograph dated 08.12.2019, all other dates were prior to the disposal of the suit. Therefore, those photographs may not be helpful to the respondents to dispute the claim of the petitioners.



5. Though the First Appellate Court relied photographs allegedly produced by the respondents, a perusal of impugned order would suggest that those photographs were not marked as documents in the interlocutory application. It is not known how the Court below relied on photographs which were not marked. However, it is also not clear whether the photographs were accompanied by certificate under Section 65B of Evidence Act. In such circumstances, the reasoning assigned by the First Appellate Court for dismissing the condone delay petition is not acceptable to this Court.

6. Having regard to the fact that the suit is for partition and the delay in filing the first appeal is only 248 days, this Court is inclined to take liberal approach in considering the condone delay petition. Further, from 25.03.2020 onwards there was a national lockdown due to Covid-19 Pandemic. In such circumstances, the delay period from 25.03.2020 to date of filing of appeal on 08.06.2020 has been very well explained.

7. In such circumstances, the order impugned in this revision is set aside



C.R.P.No.2040 of 2020

and the Civil Revision Petition stands allowed on condition that the petitioners shall deposit a sum of Rs.5000/- (rupees five thousand only) towards cost to the respondents 1 to 4. The cost shall be deposited to the credit of I.A.No.370 of 2020 in AS.C.F.R.No.2489 of 2020 on the file of Principal District Judge, Tiruppur within a period of two weeks from the date of receipt of a copy of this order. In case, the petitioners fail to deposit the amount within the time stipulated, the civil revision petition shall automatically stand dismissed. On payment of amount within the time stipulated, the civil revision petition stands allowed as stated above and then the First Appellate Court is directed to number the first appeal and dispose of the same in accordance with law.

8. The respondents 1 to 4 are permitted to withdraw the amount to be deposited by the petitioners towards cost. No costs. Consequently, connected miscellaneous petition is closed.

21.02.2024

Index : Yes / No

Internet : Yes / No

nr

5/7



C.R.P.No.2040 of 2021.

WEB COPY

To
The learned Principal District Judge, Tiruppur.



WEB COPY



C.R.P.No.2040 of 2021

S.SOUNTHAR, J.

nr

CRP.No.2040 of 2021

and

C.M.P.No.15511 of 2021

21.02.2024