



CRP.No.3735 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.3735 of 2023 and C.M.P.No.23296 of 2023

1.Subramani
2.Saraswathi

.. Petitioners

Versus

K.Sampath Kumari (Died)
1.Venkatesamy
2.Devi
3.Latha
4.G.Saravanakumar
5.Shashidhar

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 21.11.2022 made in I.A.No.1 of 2021 in O.S.No.229 of 2008 on the file of Additional Sub Court, Hosur.

For Petitioners : Mr.K.R.Samratt

For Respondents : No appearance

ORDER

Challenge has been made to the order rejecting the application filed to condone the delay of 1956 days in filing to set aside the exparte



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preliminary decree passed against the petitioners.
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2. The first respondent herein filed a suit against her brother and sister claiming partition in suit properties. The suit came to be decreed exparte on 21.07.2015. To set aside the exparte decree, applications have been filed by the petitioners under Section 5 of the Limitation Act along with Order IX Rule 13 of CPC.

3. It is the contention of the petitioners before the Trial Court that the first petitioner met with an accident on 28.12.2012 and got fractured in both legs, admitted as in-patient in the hospital for 13 days and discharged only on 09.01.2013. Due to multiple fracture, he could not walk properly and was in bed-rest for 1 ½ years and could not meet his advocate in time, therefore, the suit was decreed. Therefore, there was a huge delay. The Trial Court taking note of the fact that the allegations of the petitioners was not established and the delay has not been satisfactorily explained dismissed the application vide the impugned order.



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4. The learned counsel for the petitioners would submit that the petitioners have already filed their written statement and put forth their defence. It is the specific case of the petitioners that the plaintiff/first respondent was already given land even before the marriage and the same was sold prior to 1978. Therefore, if such facts alone are proved, the petitioners/defendants will get more share in the property. Therefore, seeks to condone the delay more liberally.

5. Heard the learned counsel for the petitioner and I have perused the materials placed on record.

6. The suit has been filed by one of the sister against the brother and sister claiming 1/3rd share in the property. The first defendant filed a written statement stating that the plaintiff had married before 1989 and as per Hindu Succession (Tamil Nadu Amendment) Act, 1989 (Act 1 of 1990), she is not entitled to any share. Further, it is the contention that for her marriage one of the item in the suit properties was sold in the year 1978. Except that, no defence has been put forth to contend that the first respondent also got rights by some other means. The reasons assigned for



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condonation of such huge delay are that the first petitioner met with accident, both legs were fractured and he was in hospital for more than 13 days, therefore, he could not walk properly which resulted in exparte decree. To substantiate such specific allegations, no evidence whatsoever is available. Therefore, once the delay has not been explained and allegations have not been proved in the manner known to law, as a matter of right particularly in the partition suit which has been almost reached finality cannot be unsettled by one of the co-owner, who has suffered a decree.

7. The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to nonchalant attitude should be curbed at the initial stage itself. Having allowed the exparte decree to remain for more



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than 9 years, suddenly filing applications that too with vague allegations itself indicate that the application is filed only in order to thwart the final proceedings. Such view of the matter, I do not find any merits in this Revision and the same stand dismissed. Consequently, connected miscellaneous petition is closed.

05.11.2024

dhk

Index : Yes/No

Internet : Yes/No

To,

The Additional Sub Judge
Additional Sub Court, Hosur



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N.SATHISH KUMAR, J.,

dhk

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