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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2931 of 2024
and
C.M.P.No.15666 of 2024

1.Shenbagam

2.R.Rajmohan .. Petitioners

Vs.

1.Padmini

2.Rani

3.Vetriselvi

4.Nalini

5.Priya

6.N.Suresh

7.S.Rajmohan

8.S.Gopu

9.T.Lakshmi

10.N.Sekar

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11.G.Ashok

12.P.Katiresan

13.Kandamangalam Panchayath,
Represented by Block Development Officer,
Kandamangalam

14.S.Manikandan

15.S.Sankar

16.Kaliyaperumal .. Respondents

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order, dated 10.06.2024, in I.A.No.832 of 2023 in O.S.No.170 of 2013 on the file of the learned Principal Subordinate Judge at Villupuram.

For Petitioners : Ms.C.P.Kavitha Renjini

For R13 : Dr.S.Suriya
Additional Government Pleader

ORDER

The present Civil Revision Petition arises against an order passed by the learned Principal Subordinate Judge at Villupuram in I.A.No.832 of 2023 in O.S.No.170 of 2013 dated 10.06.2024.

2. The civil revision petitioners herein are defendant Nos.1 and 2 in the suit.

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3. O.S.No.170 of 2013 is a suit for partition and separate possession.

4. For the sake of convenience, the parties will be referred to as per their rank in the suit.

5. Pending the suit, the 3rd plaintiff, namely one Vetriselvi, passed away. She died on 24.07.2020. She had executed a "WILL" on 07.07.2020 bequeathing her share in the property to the 2nd plaintiff, namely Rani. On account of the death of Vetriselvi, an application was filed to amend the plaint in I.A.No.1114 of 2020. The said application was dismissed on 12.10.2023 stating, without an application for bringing the legal representatives on record, an application straight away to amend the plaint is not maintainable. Thereafter, the present Interlocutory Application came to be filed under Section 5 to condone the delay of 1070 days in setting aside the abatement.

6. The said application was opposed by the civil revision petitioners, who are respondent Nos.1 and 2, stating that no reasons for the delay of

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1070 days have been given in the application. The proposed party, namely the 13th respondent, namely Kaliyaperumal, also filed a counter lodging his strong protest to the application. The 13th respondent is none other than the husband of Vetriselvi/the deceased 3rd plaintiff.

7. The learned Judge after consideration of both the arguments came to the conclusion that adding of legal representatives is indispensable and taking into consideration the strong objections lodged by respondent Nos.1 and 2, he condoned the delay on payment of Rs.1000/- to be divided in equal proportion between 1st and 2nd defendants. Challenging the same, the present Civil Revision Petition has been filed before this Court.

8. Heard Ms.C.P.Kavitha Renjini, appearing on behalf of the civil revision petitioners and Dr.S.Suriya, Additional Government Pleader, appearing on behalf of the 13th respondent.

9. Ms.C.P.Kavitha Renjini would very vehemently contend that unless and until the respondents/plaintiffs had shown “sufficient cause”, the Court below ought not to have condoned the delay. She would state that a perusal

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of the affidavit does not disclose the reason why there is a delay in filing the application, and on that short ground that the learned Principal Subordinate Judge ought to have dismissed the said application.

10. Heard the arguments on either side, and I have gone through the impugned order.

11. The fact that Vetriselvi is the 3rd plaintiff and the sister of the other plaintiffs is not in dispute. The suit is one for partition and separate possession. Vetriselvi seems to have died on 24.07.2020 that is during the period between 15.03.2020 and 30.04.2022. The Supreme Court in ***IN RE Article 142 Suo Motu Writ Petition (Civil)No.3 of 2020*** had specifically directed that the Limitation Act will stand suspended for the period from 15.03.2020 to 30.04.2022. This period was excluded by the Supreme Court, since the country was reeling due to the effects of Covid – 19 virus. Apart from that, a perusal of the order shows that the proceedings before the learned trial Judge had been stayed by this Court in C.R.P.No.3874 of 2017 till 10.10.2022. Therefore, even after 30.04.2022 till 10.10.2022, the plaintiffs could not have filed an application as the proceedings had been

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kept in abeyance by an order of this Court. Thereafter, they have filed an application in I.A.No.1114 of 2022 to amend the plaint.

12. Ms.C.P.Kavitha Renjini has been kind enough to file the said application as an enclosure to this proceeding. A perusal of the said application in I.A.No.1114 of 2022 would show that it had been filed on 19.12.2022, and it came to be dismissed only on 12.10.2023. This would show that the plaintiffs had taken an application in right earnest, but had filed an application seeking the wrong relief. Instead of filing applications to bring on record, condone delay and set aside abatement,they filed an application to amend the plaint straight away. It is only on allowing of the applications, they could have filed an application for an amendment. This is not a mistake attributable to the party. It lies elsewhere.

13. The learned trial Judge rightly dismissed the amendment petition stating without an order being passed in the main application, the question of entertaining the consequential applications does not arise. It is after the dismissal of application in I.A.No.1114 of 2022, the plaintiffs have come

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forward with the present petition.

14. As rightly pointed out by the learned Principal Subordinate Judge, bringing on record of the legal heirs in a suit for partition is essential.

15. Therefore, as majority of the period stood excluded by virtue of Covid – 19 pandemic, and the subsequent period on account of a stay granted by this Court till 10.10.2022, and the period till 12.10.2023 would have to be excluded on account of the fact that the plaintiffs had bonafidely perused an application under Order VI Rule 17 of the Code of Civil Procedure, I am unable to accept the contentions of Ms.C.P.Kavitha Renjini.

16. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

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V. LAKSHMINARAYANAN, J.

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To

The learned Principal Subordinate Judge,
Villupuram

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C.M.P.No.15666 of 2024

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