



C.R.P.(NPD).No.2221 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.2221 of 2021

and

C.M.P. No.16879 of 2021

1.Kandasamy

2.Krishnasamy

... Petitioners

Versus

1.Chinnakkal

2.Karammal

... Respondents

Prayer : Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, pleaded to set aside the Fair and Decretal order dated 24.08.2021 made in I.A.No.1 of 2019 in O.S.No.388 of 2011 on the file of the District Munsif Court, Mettupalayam at Salem District.

For Petitioners : Mr. S.N.Arunkumar

ORDER

This Civil Revision Petition is filed challenging the order dated 24.08.2021 passed by the Court below dismissing the application in I.A.No.1 of 2019 in O.S.No.388 of 2011 filed by the petitioners seeking to condone the delay of 789 days in filing the petition to set aside the *ex-parte*



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preliminary decree for partition.

2. The respondents herein filed the suit seeking partition. On 19.07.2016, an *ex-parte* preliminary decree for partition was passed in favour of the respondents/plaintiffs. Thereafter, the petitioners/defendants 2 & 4, filed the present application on 09.10.2018, seeking to set aside the *ex-parte* preliminary decree along with the petition to condone the delay of 789 days in filing such petition. In the affidavit filed in support of the condone delay petition, it was stated by the petitioners herein that the first petitioner suffered a fracture in the leg and the second petitioner affected with Typhoid at the relevant point of time and hence, they could not appoint an Advocate to contest the case.

3. It is seen from the impugned order that subsequent to the passing of *ex-parte* preliminary decree, the respondent herein filed a final decree petition on 19.09.2016 and the second petitioner entered appearance in the final decree proceedings on 18.10.2016. Further, the petitioners have not chosen to file petition to set aside the *ex-parte* preliminary decree immediately. The present application for setting aside the *ex-parte*



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preliminary decree was filed only on 09.10.2018. In such circumstances, absolutely, there is no explanation for the delay in between December 2016 to 09.10.2018. Therefore, the petitioners failed to show any sufficient cause to explain the huge delay of 789 days in filing petition to set aside the *ex-parte* preliminary decree. Therefore, the Trial Court has rightly dismissed the application filed by the petitioners.

4. Hence, I do not find any error in the impugned order passed by the Trial Court. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

15.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Case Citation : Yes / No

klt

To:

1.The District Munsif Court, Mettupalayam at Salem District.



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S. SOUNTHAR. J.,

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