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C.R.P.No.2420 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.2420 of 2021
and
C.M.P.No.18395 of 2021

1.V.Malliga

2.V.Kavitha

..Petitioners

Vs.

1.Suguna

2.Sasikala

3.Sathiya

4.Sathish

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the order dated 07.01.2021 passed in I.A.No.360 of 2019 in O.S.No.20 of 2014 on the file of Subordinate Judge, Vaniyambadi.

For Petitioners : Mr.P.Raja

For Respondents : Mr.K.Sivasubramanian

ORDER

The petitioners are on revision aggrieved by the order of the trial Court dismissing their application for condonation of delay of 713 days in seeking to set aside the *ex parte* decree granted in a suit for partition.

2. The reasons assigned is the time tested reason of suffering from



C.R.P.No.2420 of 2021

jaundice. The suit was laid for partition by the respondents seeking $\frac{1}{2}$ share in the suit properties claiming that the properties belonged to the joint family of Muniyappa Naidu, who died leaving behind his two sons viz., Appodan @ Venkatesan and Natarajan. The plaintiffs are the wife and children of Natarajan and the defendants are the wife and daughter of Appodan @ Venkatesan.

3. The learned trial Judge has dismissed the application finding that the reasons assigned is wholly unsatisfactory and that the application has been filed seven months after entering appearance in the final decree proceedings in the suit. It is seen that a written statement was filed in the suit claiming that one property belongs to Appodan @ Venkatesan and another property was purchased by the 1st defendant in her own name on 18.10.1982. The trial Court in its judgment rendered on 22.06.2017 observed that these pleadings were not established by evidence.

4. Mr.P.Raja, learned counsel appearing for the petitioners would vehemently contend that in the light of the pleadings taken in the written statement, the Court ought to have granted an opportunity to the defendants to place the evidence to prove their case.

5. Contending contra Mr.K.Sivasubramanian, learned counsel



C.R.P.No.2420 of 2021

appearing for the respondents would submit that the delay is not explained properly. There is a delay of seven months even after entering appearance in the final decree proceedings.

6. I have considered the rival submissions. This Court and the Hon'ble Supreme Court have been repeatedly stressing the need of Courts being liberal in the matters of delay, unless it is shown that the delay is *mala fide*. From the pleadings that are available it could be seen that the 1st defendant has asserted her title to one property and also pleaded that there was an oral partition. Substantial defence has been raised in the suit. After all, the Courts are there to render justice and not to legalise injustice. The petitioners do not stand to gain anything because of the delay.

7. In such circumstances, despite the reason being very flimsy and unsatisfactory, I am of the considered opinion, that an opportunity should be given to the defendants to defend the suit. However, such opportunity can be given only on terms. In fact, I find that the respondents in their counter have stated that this petition can be allowed on payment of costs of Rs.35,000/-, which in my opinion is on the higher side.

8. Hence, this revision is **allowed** and the order of the trial Court is



C.R.P.No.2420 of 2021

set aside. The delay of 713 days is condoned on condition the petitioners pay a costs of Rs.15,000/- to the counsel for the respondents within a period of four (4) weeks from today, failing which the revision will stand dismissed. The cost is to be paid to the counsel for the respondents on record in this court. On production of receipt of payment of costs, the trial Court will number and allow the application under Order IX Rule 13 of the Code of the Civil Procedure and dispose of the suit within a period of six (6) months from today. No costs. Consequently, the connected miscellaneous petition is closed.

22.01.2024

dsa

Index : No

Internet : Yes

Neutral Citation : No

Speaking order



C.R.P.No.2420 of 2021

To

The Subordinate Judge, Vaniyambadi.

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C.R.P.No.2420 of 2021

R.SUBRAMANIAN,J.

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C.R.P.No.2420 of 2021

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