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C.R.P.(NPD).No.3163 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD).No.3163 of 2023
and C.M.P.No.19554 of 2023

1.Periyannan

2.Madheswari

3.Thangaraj

... Petitioners

VS

1.Kuppayee

2.Periyammal

3.Kandayee

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 22.06.2023 passed in I.A.No.1 of 2023 in O.S.No.705 of 2016 on the file of the Principal District Munsif Court, Salem.

For Petitioners : Mr.D.Ashokkumar

For Respondents : Mr.Shahul Hameed
for M/s.C.Prabakaran



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ORDER

WEB COPY This Civil Revision Petition is filed against the order of the learned Principal District Munsif, Salem in I.A.No.1 of 2023 in O.S.No.705 of 2016, dated 22.06.2023.

2. O.S.No.705 of 2016 is a suit for partition presented by the daughters as against the civil revision petitioners.

3. On receipt of the suit summons, the defendants were called upon to file their written statement. This is after they had engaged a counsel and sought time for the said purpose. Time was granted on 14.12.2015, 27.01.2017, 20.02.2017, 24.02.2017, 09.06.2017 and 28.06.2017. Despite having pulled down the matter for nearly 7 months, the civil revision petitioners did not file their written statement. However, the 2nd defendant presented his statement. Therefore, being left with no other option, the learned District Munsif Court, Salem set the civil revision petitioners *ex parte*. After contest, the suit came to be decreed on 16.12.2017.



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WEB COPY 4. Thereafter, the civil revision petitioners/defendants 1, 3 and 4 had filed an application in I.A.No. of 2023 in O.S.No.705 of 2016 to condone the delay of 427 days in filing the petition to set aside the decree. It was filed on 18.03.2019. The learned Principal District Munsif, Salem continued to return the papers without numbering the same.

5. This constrained the petitioners to move a civil revision petition in C.R.P.(PD).No.2140 of 2020, which came to be allowed on 06.08.2021. The Revisional Court directed the Principal District Munsif, Salem to decide on the maintainability of the application and if it came to a conclusion the petition is maintainable, to number the same and pass orders on merits.

6. The learned Principal District Munsif, Salem finding that the petition is maintainable, took it on file as I.A.No.1 of 2023 and after receipt of the counter from the plaintiffs, went on to dismiss the petition, which is challenged before this Court.



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7. Heard Mr.D.Ashokkumar, learned counsel appearing for the petitioners and Mr.C.Shahul Hameed representing Mr.C.Prabakaran, counsel appearing for the respondents.

8. Mr.D.Ashokkumar, would state that the 3rd revision petitioner namely Mr.Thangaraj, who is the 4th defendant in the suit, had to go to Chitra Durga District in the neighbouring State of Karnataka. He was doing bore well work there and therefore, when the counsel tried to contact him, he was not in a position to respond the same. He would further plead that the mother and the father of the 4th defendant were also not in a position to contact the lawyer to give instructions to file a written statement. This resulted in a *ex parte* decree. He would state that the petitioners have made out a sufficient cause namely of not being in station due to their vocation and instead of considering the delay liberally, which is not of a long duration, the learned Judge has dismissed the petition. Therefore, he seeks the order to be set aside.



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9. Mr.C.Shahul Hameed, would submit that between the very same parties, another suit came to be filed in O.S.No.843 of 2015 in which proceeding, the defendants 1 and 3 contested the same and that resulted in a decree. He would state that there is no cause which has been set out for the reason why the defendants 1 and 3 could not contact the lawyer to file their written statement. He would state that he has spent a sum of Rs.15,000/- in appointing of Advocate Commissioner to suggest the mode of division and only after steps had been taken by the Advocate Commissioner, the present petition came to be filed. He would state that there is no merits in revision, and the same deserves dismissal.

10. A perusal of the affidavit filed in support of the petition would show that the 4th defendant/3rd civil revision petitioner Mr.Thangaraj, had clearly and categorically deposed that he left Salem District and was working as an assistant in a bore well work at Chitra Durga in Karnataka at the time when the suit was decreed *ex parte*. He had also stated that being a location which is situated in the hills, his counsel could not contact him. Hence, he would plead that there occasioned a delay. In order to substantiate his case, he



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also entered the witness box and deposed as PW.1. He had also subjected himself to cross examination.

11. I have to take into consideration that important rights relating to immovable property are involved in the litigation. In such situation, it is better that the parties get judgment on merits rather than one by default. However, I cannot be insensitive to the fact that the plaintiffs have been knocking on the doors of the court for the past 8 years and has incurred considerable amounts in litigation. Therefore, while finding sufficient cause for the petitioners, I am not inclined to set aside the order for the asking.

12. Therefore, the order of the learned Principal District Munsif at Salem in I.A.No.1 of 2023 in O.S.No.705 of 2016, dated 22.06.2023 is set aside on condition that the petitioners shall pay a sum of Rs.50,000/- to the respondents/plaintiffs within a period of four weeks from the date of receipt of copy of this order. In case, the cost is not paid, the benefit of this order will not enure to the petitioners. The civil revision petition would stand automatically dismissed without further notice to this Court. In the



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eventuality of the petitioners complying with the order in this revision, then the learned Judge is requested to set aside the *ex parte* decree, receive the written statement, frame issues and dispose of the suit as expeditiously as possible. She shall take into consideration the suit being pending for 8 years, it would be better to follow the directions given by the Administrative Side of this Court for the suits pending over a period of 5 years.

13. With the above condition and directions, the Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

12.07.2024

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

The Principal District Munsif Court,
Salem.



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V.LAKSHMINARAYANAN, J.

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