



C.R.P. (NPD)No.528 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2024

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(NPD)No.528 of 2022

1.THirumathal
2.S.Venkatachalapathy

... Petitioners

Vs.

1.S.Mallika
2.Santhi

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India praying to call for the records of the Lower Court and set aside the order and decreetal order dated 29.10.2021 passed by the learned IV Additional District and Sessions Judge at Coimbatore in I.A.No.1/2019 in A.S.No.39/2014.

For Petitioners : Mr.S.Yudhush Padman

For Respondent : Mr.B.Bharathkumar
for Mr.V.Nicholas

ORDER

This Civil Revision Petition is filed against the order dated 29.10.2021 made in I.A.No.1/2019, filed to condone the delay of 1139 days

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in filing petition to set aside the exparte preliminary decree passed with respect to B Schedule property in the appeal before the Appellate Court.

2. The petitioners herein are the respondents 1 and 2 in the appeal and defendants 1 and 2 in the Suit. The 1st respondent herein is the appellant in the appeal and the plaintiff in the Suit. The 2nd respondent herein is the 3rd respondent in the appeal and the 3rd defendant in the Suit. For the sake of convenience the parties shall be referred as per their rank in the Suit.

3. The plaintiff has filed the Suit in O.S.No.211/2010 against the defendants 1 to 3 seeking partition. The Trial Court has dismissed the Suit on the ground that it was barred by limitation. The plaintiff has preferred appeal. In the appeal before the Appellate Court in A.S.No.39/2014, partition with respect to B Schedule property was granted in favour of the plaintiff and as regards 'A' schedule property, the claim of the plaintiff was dismissed. Second Appeal in SA.No.315/2016 has been preferred by the



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plaintiff, however the decree passed by the Appellate Court has been confirmed in the Second Appeal.

4. The defendants 1 and 2/petitioners herein has filed the application seeking to condone the delay of 1139 days in filing petition to set aside the exparte preliminary decree passed in the appeal before the Appellate Court with respect to 'B' Schedule property. The said application was dismissed vide order dated 29.10.2021 in I.A.No.1/2019 in A.S.No.39/2014. Challenging the same, the present CRP is filed.

5. The learned counsel appearing for the defendants 1 and 2/petitioners would state that under the belief that the 3rd defendant would take care of their interest also, they entrusted the case papers to the 3rd defendant, who had purchased 'A' schedule property. However, the 3rd defendant did not give any details about the case and took steps only to protect her property. The defendants 1 and 2/petitioners, immediately on coming to know about the final decree proceedings in the Appeal Suit, had filed the application with delay of 1139 days in filing petition to set aside the



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preliminary decree passed with respect to 'B' Schedule property. The learned Appellate Judge, without considering the case of the defendants 1 and 2/petitioners, had dismissed the application.

6. The learned counsel for the 3rd defendant / 2nd respondent submitted that defendants 1 and 2/petitioners did not appear and contest the appeal and they did not entrust the case with the 3rd defendant/2nd respondent. Even before the Trial Court they have set exparte and further in the Second Appeal also, they did not appear.

7. Heard both sides and also perused the materials available on record.

8. The Suit is one for partition. The 3rd defendant is the purchaser of 'A' schedule property. As regards 'B' schedule property, the 3rd defendant has no right, the defendants 1 and 2 / petitioners only would have contested the case. The defendants 1 and 2 / petitioners have not produced any evidence before the Lower Court to show that they entrusted their case to the 3rd



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defendant / 2nd respondent. When the plaintiff filed Suit against the petitioners seeking partition, it is for them to contest the claim diligently.

Even the defendants 1 and 2 / petitioners did not appear in the appeal proceedings before the Appellate Court as well as before this Court. The defendants 1 and 2 / petitioners have not explained the delay of 1139 days with sufficient cause. Since, defendants 1 and 2 / petitioners have not offered any acceptable reason for such huge delay, the Trial Court has rightly rejected the claim of the defendants 1 and 2 / petitioners, which does not warrant any interference of this Court.

9. Accordingly, this Civil Revision Petition is dismissed. No costs.

20.03.2024

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To
The IV Additional District and Sessions Judge at Coimbatore



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J.NISHA BANU,J.

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