



C.R.P.(PD).No.3371 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.3371 of 2019
and CMP.No.22084 of 2019

T.Azhagappan

... Petitioner

vs.

Annam @ Annammal (died)

- 1.Deivanai
- 2.Vimala
- 3.Uthiravathi
- 4.D.Gunabhushani
- 5.V.Sarathi
- 6.T.Balasundaram
- 7.Selvaganapathy
- 8.Saradha
- 9.Sandanaraj @ Santhanam
- 10.Sivagalai

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, praying to set aside the order and decree dated 15.07.2019 in I.A.No.496 of 2018 in O.S.No.69 of 2007 on the file of the Principal Subordinate Judge, Pondicherry.



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For Petitioner : Mr.R.Rajarajan
For Respondents : Mr.K.V.Anantha Krishnan
for R2 to R5 and R6
No appearance for R8
R7, R9 and R10-Batta due
No appearance for R1 (died)

ORDER

The Civil Revision petition is filed challenging the order passed by the trial Court dismissing the application filed by the petitioner seeking to condone the delay of 87 days in filing petition to set aside the ex-parte decree passed against him.

2. The respondents 1 to 5 filed a suit for partition against the petitioner and other respondents. The said suit was decreed ex-parte against the petitioner and other respondents on 02.04.2018. The petitioner and others filed an application to set aside the ex-parte decree along with an application to condone the delay of 87 days in filing such application. The said condone delay application was dismissed by the Court below. Aggrieved by the same, the petitioner is before this Court.



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3. In the affidavit filed in support of the condone delay application, it was stated by the petitioner that at the relevant point, he was suffering from jaundice and hence he could not appear before the Court. The trial Court without considering the reason assigned by the petitioner by way of non-speaking order, simply dismissed the application. The non-speaking one line order passed by the trial Court cannot be allowed to stand and therefore, the same is liable to be set aside.

4. In view of the reason assigned by the petitioner that at the relevant point of time, he was suffering from jaundice and also the fact that the suit is for partition, this Court is inclined to take liberal view and condone the delay.

5. Accordingly, the Civil Revision Petition is allowed and the trial Court is directed to take up the application to set aside the ex-parte decree and dispose of the same as expeditiously as possible.



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6. In view of the fact that the suit is of the year 2007 and the same is dragged for nearly 17 years, in case, ex-parte decree is set aside, every endeavour shall be made by the trial Court to dispose of the suit as expeditiously as possible.

7. The learned counsel appearing for the respondents submitted that taking advantage of the physical possession, the petitioner is dragging on the proceedings without allowing the respondents to enjoy the fruits of the decree likely to be passed in his favour.

8. The learned counsel further submitted that the petitioner who is in physical possession of the property is enjoying the profits. It is always open to the respondents to file an appropriate application before the trial Court for appointment of receiver, if so advised and any such application shall be disposed on its own merits, without being anything said in this order. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2024

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



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To

The Principal Subordinate Judge,
Pondicherry.



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S.SOUNTHAR, J.

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