



C.R.P. No.3544 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3544 of 2023

1. Amarjothi
2. Saraswathi

... Petitioners

versus

1. Thangarasu
2. M/s.Dalmia Minerals and Properties Ltd.,
rep. by Power Agent
V.B.Ganapathiraman

3. Rengarajan

... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the order dated 17.07.2023 passed in I.A.No.1 of 2020 in A.S.SR.No.683 of 2020 pending on the file of Principal Sub-Court, Ariyalur.



C.R.P. No.3544 of 2023

WEB COPY

For Petitioner : Mr.V.Raja

For Respondents : Mr.V.S.Rishwanth for R1

Mr.Rahul Balaji for R2

R3 – No appearance

ORDER

Challenging the impugned order passed in I.A.No.1 of 2020 in A.S.SR.No. 683 of 2020 passed by Principal Sub-Judge, Ariyalur, the Revision Petitioners have preferred this Civil Revision Petition.

2. The Revision Petitioners/defendants 2 and 3 have preferred an application in I.A.No. 1 of 2020 before the first appellate court (Principal Sub-Court, Ariyalur) praying to condone the delay of 668 days in filing the appeal against the decree and judgment passed in O.S.No.230 of 2017 on the file of Addl. District Munsif, Ariyalur, dated 20.06.2018. The said application was dismissed by the first appellate judge holding that already the appeal was filed by the 2nd respondent/1st defendant herein in A.S.No.22 of 2018 against the judgment and decree of trial court, wherein the first appellate court categorically determined that these revision petitioners does not have any



C.R.P. No.3544 of 2023

manner of right in the suit property by confirming the findings of trial court and consequently, the first appeal was dismissed. After the dismissal of the said first appeal, these revision petitioners, who were well aware of the said proceedings, now came forward with the present application to condone the delay, as such is not maintainable for the reason that the revision petitioners have no locus standi to seek any relief by way of appeal as already their right has been decided in the earlier appeal in A.S.No. 22 of 2018 and the said judgment already became resjudicata as against these petitioners. Therefore, the application to condone the delay was dismissed. Aggrieved over the same, now the defendants 2 and 3 approached this court.

3. The learned counsel for Revision Petitioners would submit that in the earlier appeal, they were not appeared nor they have submitted their arguments. Therefore, the findings rendered in A.S.No.22 of 2018 preferred by the 1st defendant would not bind them and they are independently entitled to prefer their appeal, however, due to illness, they were not able to file appeal in time. Hence, there is a delay in filing the appeal, but the appellate judge failed to appreciate the facts and circumstances. Therefore, they prayed to condone the delay.



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4. As rightly pointed out by the counsel for 1st respondent/plaintiff that the suit in O.S.No.230 of 2007 was filed by him for the relief of declaration stating that the plaintiff purchased the suit property for a valid consideration from one Chellammal, thereby he is claiming right over the property. But the contention of revision petitioners/defendants 2 and 3 herein that they are the wife and daughter of deceased Govindarasu and the said Govindarasu is son of said Chellammal and her husband Ramachandran. According to these revision petitioners, the 1st petitioner's husband was died while she was pregnant and he died leaving behind plaintiff, new born child and his mother Chellammal. Therefore, in the entire joint family property, the revision petitioners are also having share and there was a family arrangement was also held. Furthermore, they are having valid defence to prove the fact that the suit property was allotted to them in the family arrangement. While the 1st petitioner attempted to prefer appeal, due to illness, she is not able to contact her counsel. The 1st petitioners an illiterate widow and 3rd defendant, who is her daughter is also an illiterate lady, due to lack of communication, they are not able to file appeal in time. Hence, they preferred the present appeal with the delay of 668 days. But, the



objection of plaintiff is that in the earlier appeal in A.S.No.22 of 2018, the right of these parties have been decided and notice was also served on them. So, they were very well aware of appeal filed by the 1st defendant.

5. Admittedly, in the appeal filed by the 1st defendant, notice was served to these revision petitioners, but however on seeing the defence taken by them, they are original legal heirs of Chellammal through her deceased son Govindaraj and they are the primary legal heirs for having valid defence to prove their contention and the 3rd defendant is totally differs from the 1st defendant viz., M/s. Dalmia Minerals and Properties Ltd., since the 1st defendant had purchased the suit property from 2nd and 3rd defendant. The revision petitioners are co-parceners through their title over the property. Further, they have executed a deed of exchange to the 1st defendant, but through the deed of exchange, the 1st defendant does not take away their right over the suit property. Therefore, the revision petitioners are independently entitled to prove their defence, however, the reason for the delay is that due to illness, they are not able to file appeal in time. But, there is no medical proof produced to that effect and the entire fact reveals that they are illiterate widow and daughter, due to lack of communication, they were not able to file appeal in time, but the



C.R.P. No.3544 of 2023

appellate judge without giving opportunity to them dismissed the said application as such is unwarranted one. If opportunity is not given to them, the valuable right to protect their property will be defeated. Therefore, the findings given by the appellate judge is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and findings given by appellate judge in I.A.No.1 of 2020 in A.S.SR.No. 683 of 2020 is set aside and the I.A. is ordered to be allowed with the condition that the revision petitioners shall deposit a sum of Rs.2000/- to District Legal Services Authority, Ariyalur within a period of two weeks from the date of receipt of copy of this order and on such deposit, the appellate judge is directed to take the appeal on file and dispose the same on merit. No costs.

07.06.2024

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To

Sub-Court,
Ariyalur.

6/7



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C.R.P. No.3544 of 2023

T.V.THAMILSELVI, J.

rpp

C.R.P. No.3544 of 2023

07.06.2024