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C.R.P.No.3398 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3398 of 2019

and

C.M.P. No.22308 of 2019

R. Susheela W/o. D. Raja

... Petitioner

Vs.

K. Saraswathi (Deceased)

1. P. Kalliammal W/o. Ramaswamy
2. G. Kannammal (died) W/o. Ganapathy Gounder
3. K. Shanmugasundaram S/o. K. Kumaraswamy
4. K.P. Manimegalai W/o. K. Palanisamy
5. S. Nalini W/o. V. Shanmugasundaram
6. Balasubramanian
7. Krithika D/o. Balasubramanian
8. Gowthami D/o. Balasubramanian
9. Chinna Ganapathiappan S/o. Late Karuppusamy
10. Sampath Kumar S/o. Chinna Ganapathiappan
11. Sivakumar S/o. Chinna Ganapathiappan

[R9 to R11 are brought on record as Legal representatives of 2nd respondent vide order dated 18.08.2023 made in C.M.P. No.16176 to 16178 of 2023]

...Respondents



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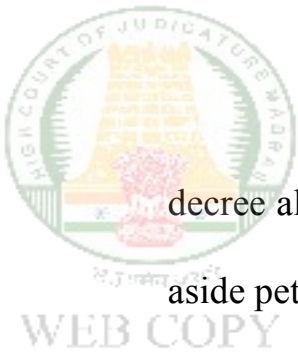
PRAYER: Civil Revision Petition filed under Section 227 of the Constitution of India praying to set aside the fair and decreetal order dated 02.04.2019 passed by the learned I Additional District Munsif Court, Coimbatore made in I.A. No.1 of 2019 in O.S. No.1190 of 2019.

For Petitioner	: Mr. N. Krishnakumar for M/s. Sarvabhauman Associates
For Respondents	: Mr.K. Govi Ganesan [for R1, R3&R8] R2 – died R4, R6, R9 to R11 – No appearance R5 – left.

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 4107 days for filing petition to set aside the exparte preliminary decree.

2. The respondents 1 and 2 along with one Saraswathi filed a Suit for partition against the petitioner and other 3rd parties. In the said Suit, a preliminary decree for partition was passed in favour of the respondents on 05.11.2007. The petitioner herein filed an application to set aside the exparte



decree along with petition to condone delay of 4107 days in filing the said set aside petition on 04.12.2019.

3. In the affidavit filed in support of condone delay petition, it is stated by the petitioner that on receipt of Suit summons, she contacted her vendor, the 1st defendant in the Suit and entrusted the matter to him to defend the Suit. It was also stated that as per the request of the 1st defendant, the petitioner also signed in some papers for the purpose of conducting the case. It was further stated by the petitioner that she completely believed the words of the 1st defendant and kept quiet on the assumption that the 1st defendant would take care of the case. However, to her shock and surprise, after the receipt of notice in final decree proceedings, it has come to her knowledge that the exparte decree was passed against her and hence steps have been taken to set aside the exparte decree with condonation of delay.

4. It is seen from the impugned order that the petitioner, after receipt of Suit summons, appeared before the Court on 01.09.2005 itself and thereafter, failed to file her written statement and hence exparte decree was passed on



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19.01.2006. Thereafter on application filed by the petitioner in I.A. No.794 of 2006, the exparte decree was set aside and the matter was posted for trial. The petitioner failed to cross examine the plaintiff side witnesses and hence again exparte decree was passed on 05.11.2007. Thereafter in I.A. No.2321 of 2009, final decree application filed by the respondents, the petitioner appeared through her counsel and filed a counter statement and had contested the final decree proceedings. Therefore, the petitioner had quite knowledge about the Suit in the year 2005 itself and she had been actively contesting the final decree proceedings also. In such circumstances, the affidavit filed by the petitioner as if she entrusted the matter to the 1st defendant is not acceptable to condone huge delay of 4107 days.

5. The Trial Court rightly dismissed the application as petitioner failed to show sufficient cause within the meaning of Section 5 of Limitation Act and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.03.2024

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

The I Additional District Munsif Court,
Coimbatore.



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S.SOUNTHAR, J.

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