



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM

THE HONOURABLE Mr. JUSTICE A.D.JAGADISH CHANDIRA

**C.R.P.(NPD).No.4423 of 2023
and C.M.P.No.26708 of 2023**

Gunasekaran

... Petitioner

Vs.

1. Rajeswari
2. Gunasundari
3. Gunasekari
4. Gunavasanthi

... Respondents

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment dated 28.07.2023 passed in I.A.No.2 of 2021 in A.S.Sr.No.3217 of 2020 by the Principal District Judge, Kancheepuram District at Chengalpet.

For Petitioner : Mr.A.Parthasarathy

For Respondent-1 : Mr.K.Ramkumar

For Respondents

2 to 4 : Ms.G.Subangilakshmi



WEB COPY

ORDER

This civil revision petition has been filed seeking to set aside the judgment and decree dated 28.07.2023 passed in I.A.No.2 of 2021 in A.S.Sr.No.3217 of 2020 by the Principal District Judge, Kancheepuram District at Chengalpet dismissing the petition filed under Order 41 Rule 3(A) C.P.C praying to condone the delay of 2493 days in filing the appeal.

2. The petitioner is the first defendant in O.S.No.61 of 2009 filed by the respondent/plaintiff for partition. After a full fledged trial, the suit was decreed and a preliminary decree was passed on 17.09.2013, granting 1/5th share to the plaintiff as well as defendants in the suit. Subsequently, I.A.No.194 of 2015 in O.S.No.61 of 2009 was filed by the plaintiff on the file of the Sub Court, Madurandagam for appointment of an Advocate Commissioner to divide the suit properties into 5 equal shares. The Advocate Commissioner has also filed his report and the properties were divided by metes and bounds with the help of a Surveyor and handed over



to the respective parties. The petitioner/the first defendant had filed an appeal with the delay of 2493 days.

3. In the petition to condone the delay in I.A.No.2 of 201, the petitioner contended that the properties purchased by him had been included as item Nos.9 to 13 unlawfully and despite his contest, the suit was decreed. Further, he contended that he fell ill and that he could not attend the Court. Therefore, he was set *ex-parte* and the final decree was passed on 31.10.2018. The petitioner had contacted the respondents for a compromise and they had also agreed not to interfere in respect of his properties (item Nos.9 to 13). He was under the belief that the respondents would not interfere with his possession. However, he later came to know that the respondents had obtained a final decree. Further, since the petitioner was bedridden with a prolonged illness and also due to covid-19, he was unable to file the appeal in time.



WEB COPY

4. In the petition, the respondents had filed a counter contending that the petitioner was aware of all the proceedings and filed the condone delay petition after an enormous delay of 7 years, only to defeat the fruits of the decree being enjoyed by the respondents.

5. The appellate Court, finding that the delay of 7 years was enormous and that sufficient cause has not been shown, had dismissed the petition, against which the present revision has been filed.

6. The learned counsel for the petitioner would submit that the respondents are none other than the mother and sister of the petitioner. He would submit that item Nos.9 to 13 in the suit are his self acquired properties, against which the respondent /plaintiff had filed a suit for partition and obtained the final decree. He would further submit that he has got a good case on appeal. Due to the fact that the compromise talks were ongoing between the parties and his mother and sisters had



WEB COPY

undertaken not to interfere with his possession, he had not filed the appeal in time. However, they have obtained the final decree behind his back. Further, the petitioner was affected by Covid. Hence, a delay of 2493 has occurred.

7. The learned counsel for the first respondent/plaintiff had filed a detailed counter. He would submit that after the full fledged trial, the judgment and decree was pronounced on 17.09.2013 in O.S.No.61 of 2009. Thereafter, the respondent/plaintiff had filed a final decree petition in I.A.No.194 of 2015 and notice was served on the revision petitioner on 21.10.2016. The petitioner appeared in person before the trial Court and sought time for filing the counter. Thereafter, the case was posted for several hearings for filing counter. However, he failed to do so. Since the petitioner had not appeared before the Court, he was set *ex-parte*. An Advocate Commissioner was appointed and the properties were divided into 5 equal shares. Thereafter, the final decree was passed on 31.10.2018. Subsequently, the possession has been taken by the



WEB COPY

respective parties and that the revenue records have also been mutated in their names. The petitioner knowing well that the possession has been taken by the parties, filed an appeal with an enormous delay of 7 years only to defeat the fruits of the decree.

8. Learned counsel for respondents 2 to 4 would submit that though the petitioner claims that he was unable to file the appeal in time due to covid-19, the appeal along with the petition to condone the delay was filed only during the Covid. Further, he submits that each and every day delay has to be explained. Though the petitioner claims that Items Nos.9 to 13 are his self acquired properties, it has been categorically observed by the trial Court that at the time of purchase of these properties, he was only studying in the 12th standard. The trial Court has given a finding that it was not possible for him to have purchased the said properties at that time. He would submit that the petitioner has not explained the reasons for the delay. Therefore, the appellate Court had rightly finding that the delay has



not been properly explained and sufficient cause has not been shown dismissed the application. Therefore, he would seek for dismissal of this revision.

9. Heard the learned counsel on both sides and perused the materials available on record.

10. The petitioner filed an appeal with a delay of 2493 days stating that compromise talks were ongoing and that he had suffered from Covid. However, no material evidence has been produced before the appellate Court. Furthermore, each and every day delay has not been explained. Therefore, the appellate Court, finding that the petitioner has not shown sufficient cause to condone the delay, dismissed the application.

11. In view of the above, this Court does not find any illegality or infirmity in the order passed by the learned Principal District Judge,



WEB COPY

Chengalpet. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected Criminal Miscellaneous Petition is closed.

29.08.2024

Internet : Yes / No

Index : Yes / No

Speaking / Non-speaking order

srn

To

The Principal District and Sessions Judge at Tiruvallur.



WEB COPY



A.D.JAGADISH CHANDIRA,J.

srn

**C.R.P.(NPD).No.4423 of 2023
and
C.M.P.No.26708 of 2023**

29.08.2024



WEB COPY

