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CMP.No.24960 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 08.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CMP.No.24960 of 2024

in

CRP SR.No.140401 of 2024

1. Rayar
2. Jothi
3. Ravi

. . . Petitioners

Versus

1. Selvarasu
2. Ayyadurai
3. Kalyanasundaram
4. Dhanavel
5. Sandhanavalli Ammal
6. Susila
7. Panjavarnam Ammal
8. Arul Kumar
9. Arularasan

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the decree and judgment dated 19.10.2023 passd in I.A.No.160 of 2022 in unnumbered A.S.No. Of 2022 on the file of the Principal District Court, Cuddalore District.



CMP.No.24960 of 2024

For petitioner : Mr.S.Pushpakaran

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ORDER

This petition has been filed to condone the delay of 244 days in preferring the Civil Revision Petition against the dismissal of the application filed to condone the delay of 1913 days in preferring an appeal against the decree and judgment passed in O.S.No.44 of 2011 on the file of the Sub Court, Neyveli.

2. The reason assigned in the affidavit to condone the delay of 1913 days is that the suit was contested by the father of the petitioners and he has become ill and he is not aware of the pendency of the suit. It is his further contention that he came to know about the suit only during the final decree proceedings when the properties are sought to be measured. Hence, an application has been filed to condone the delay of 1913 days in preferring the appeal. The trial Court considering the entire materials, particularly, the evidence of D.W.1, who is none other than the second petitioner in the application, who has sworn on behalf of the other petitioners, came to the conclusion that infact the second petitioner was



CMP.No.24960 of 2024

examined as D.W.1 and one Suresh was examined as D.W.2 and D.W.1 has also admitted that they have no objection for partition of the properties except in respect of 7, 8, 9 10 and 15 and they have no objection for passing of the preliminary decree in respect of other 16 items of the properties. Having given evidence, now in the affidavit filed along with the application to condone the delay, it has been averred as if, the petitioners are not aware of the proceedings. Hence, the trial Court dismissed the application to condone the delay 1913 days in preferring the appeal. As there is a delay of 244 days in preferring a Civil Revision Petition, against the said Order of dismissal, the present petition has been filed.

3. A perusal of entire materials indicate that the petitioner has not given any explanation to condone such a huge delay of 1913 days except contending that only the petitioners' father was contesting the suit and the petitioner is not aware of the proceedings. But the fact remains that the very affidavit itself is nothing but own imagination of the petitioner. Infact, the second petitioner, who has sworn the affidavit, has been examined as as D.W.1 on the side of the defendant and he has in his evidence admitted for passing of preliminary decree in respect of 16 items of suit properties in favour of the plaintiffs. After participating in the trial, now an



CMP.No.24960 of 2024

application has been filed contending that he is not aware of the proceedings and passing of the preliminary decree. The said contention itself, in fact, indicate that the present petition is nothing but an abuse of process of law. Therefore, the Order of the trial Court does not require any interference. Hence, there is no purpose in condoning the delay of 244 days in preferring a Civil Revision Petition against the Order of the trial Court in dismissing the application filed to condone the delay of 1913 days.

Accordingly, this Civil Miscellaneous Petition is dismissed. Consequently, the Civil Revision Petition is rejected. No costs.

08.11.2024

Index : Yes / No

Internet: Yes

Speaking/non speaking order

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CMP.No.24960 of 2024

N. SATHISH KUMAR, J.

VTC

CMP.No.24960 of 2024

08.11.2024