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C.R.P.[NPD].No.4659 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 26.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4659 of 2024 & CMP.No.26014 of 2024

1. P.Gopi
2. P.Mala
3. P.Kamaraj

. . . Petitioners

Versus

1. Uma
2. Manjupriya
3. Madhan
4. Kasiammal
5. Lakshmiammal
6. Rani
7. Kaleeswaran
8. Kowsalya
9. Kalaiarai
10. Tamilselvi
11. Senthilkumar

. . . Respondents



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PRAYER : Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 03.08.2024 of the learned Principal Subordinate Judge, Kancheepuram passed in I.A.No.450 of 2016 in O.S.No.65 of 2006 and allow the above Civil Revision Petition.

For petitioners : Mr.P.Vishnu Manoharan

Respondents : Mr.K.Thenrajan – R7

ORDER

Challenge has been made to the order of dismissal of the application filed by the revision petitioner to condone the delay of 757 days in filing an application to restore the suit which was dismissed for default.

2. Brief background of the case is as follows :

The suit in O.S. No.65 of 2006 has been filed by the plaintiffs as against the defendants for partition claiming 4/25 shares. When the suit has been posted for taking steps to implead the legal heirs of the first defendant, as the



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plaintiff has not taken any steps to implead the legal representatives of the first defendant, the suit has been dismissed for default on 21.10.2023. The application filed to implead the legal representatives of the first defendant has also been returned. However, due to oversight, those papers have been misplaced in the counsel's office and the same cannot be traced. Therefore, there is a delay of 754 days in filing an application to restore the suit. The application filed to condone the delay has been dismissed by the trial Court. Challenging the same, the present Civil Revision Petition has been filed.

3. The respondents 2 to 4 have originally endorsed no objection for allowing the application filed to restore the suit. The respondents 5 and 8 have already been set exparte in the suit. The respondents 9 to 13 have also not filed counter and they have no objection in allowing the application. The 7th defendant is a subsequent purchaser. It is his contention that no proper reason adduced to condone such a huge delay. Hence, he opposed the petition.

4. I have perused the entire materials available on record.



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5. The suit is one for partition and for separate possession. When all the other defendants have not even raised any objections, the 7th defendant has objected the application. Merely because, he has purchased the property from a co-sharer, he cannot vehemently object. The right of the purchaser of the undivided share is always subject to the right of his vendor. In such view of the matter, though sufficient reason has not been explained in the application, this Court is of the view that the suit being a partition suit, in order to give a fair opportunity to the parties, one more chance has to be given to the plaintiffs.

6. Accordingly, the this Civil Revision Petition is allowed subject to the condition that the plaintiffs shall pay cost of Rs.5000/- to the Legal Services Authority, Kancheepuram within a period of two weeks from today. On such payment, the trial Court shall restore the suit and proceed with the suit, after giving an opportunity to the parties and decide the issue on merits



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expeditiously. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet: Yes
Speaking/non speaking order
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N. SATHISH KUMAR, J.

VTC

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