



C.R.P. (PD) No.3896 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) No.3896 of 2019
and C.M.P.No.25723 of 2019

1. V.Sivanand
2. A.V.Suchithra
3. V.Hemanth
4. Karthika (Minor)
Petitioner No.4 is being minor
& Rep. By Mother & Guardian
A.V.Suchithra
Petitioners 2 to 4
are residing at "Soukesh",
Near Govt. House, Mahe.
5. M.C.Vinodan
6. Vivek, V.
7. Kavitha Santhosh
8. Vinutha Prasanth
Petitioners 6 to 8 were
residing at No.39, Vikas,
3rd Cross, Hanumanthappa Layout,
Sulthanpalaya,
R.T.Nagar P.O.
Bangalore-560 032
Karnataka State,
Petitioners 7 &8 are Rep. by
Power of Attorney M.C.Vinodan

.. Petitioners

Versus



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Sathi Devi (Deceased)

Rep. by her Legal Heirs

Respondents 1 to 3

1. Suman Ajith Kumar
2. Sabeena Ramdoss
3. Bindhu Ramdoss
4. V.Pushpa
5. V.Mahesh Babu
6. V.Kathuri Aravindakshan
7. V.Priya Presannakumar
8. V.Preethi Aravindakshan
9. V. Pritam Aravindakshan
- 10.K.P.Usha Bai
- 11.V.Jithesh
- 12.V.Deepak
- 13.Savithri Mohandas
- 14.Smitha Naveed
- 15.Soumya Mohandas

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 21.06.2019 made in I.A.No.768 of 2019 in Un No. As No. of 2018 on the file of Learned Principal District Judge, Puducherry.

For the Petitioner : Mr.R.Thiagarajan



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ORDER

This Civil Revision Petition challenges the order of learned Principal District Judge at Puducherry in I.A.No.768 of 2019 in Un No.AS No. of 2018 dated 21.06.2019.

2. The civil revision petitioners are the defendants in a suit for partition. O.S.No.45 of 2000 was presented for partition and separate possession. The suit came to be decreed on 08.03.2013. Against the preliminary decree, a regular appeal is said to have been filed in A.S.No.18 of 2013. The appeal is said to be pending on the file of the II Additional District Judge at Puducherry.

3. As the preliminary decree had not kept in abeyance, the plaintiff filed I.A.No.189 of 2013 seeking for passing of the final decree. In the said application, the Court appointed an Advocate Commissioner and received a report from the said Commissioner. A final decree was passed on 28.09.2015. Challenging this final decree, an appeal was presented before the learned



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Principal District Judge at Puducherry. On account of the delay that was caused in preferring the appeal, an application was presented in I.A.No.768 of 2018 to condone the delay in filing the appeal. Two reasons were set forth for condonation of delay of 831 days. They are:

(i) the 7th defendant had passed away and, therefore, his legal heirs were not in a position to file the appeal in time, since they were suffering from depression.

(ii) The plaintiff had approached the appellants/civil revision petitioners for amicable settlement and therefore, they did not file an appeal. They were shocked to know that the plaintiffs did not settle the matter only when an execution petitions were filed in E.P.Nos.20 and 21 of 2016 before the Additional Subordinate Judge at Mahe.

4. On these grounds, they sought for condonation of delay and presented the appeal. Notice was ordered to the respondents. The respondents were served and they remained *ex parte* before the Principal District Judge. Learned Principal District Judge took up the petition for disposal and found no sufficient cause and therefore, dismissed the petition. Hence, this revision.



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5. I heard Mr.R.Thiagarajan for the civil revision petitioner.

Mr.R.Thiagarajan pleads that the order of the Principal District Judge deserves the interference by this Court on the following ground:

The petitioners have showed sufficient cause to condone the delay. The learned District Judge did not take into consideration that an appeal is pending as against the preliminary decree and in case, the preliminary decree is allowed, it will have consequences on the final decree.

6. I have carefully considered the submissions of Mr.R. Thiagarajan.

7. The narration of the facts shows that the civil revision petitioners were aware of the final decree having been passed by the learned Subordinate Judge at Mahe. Yet they did not prefer an appeal in time. In order to get benefit under Order XLI Rule 3(A) of the Code of Civil Procedure, the parties would have to show that they have a sufficient cause in not preferring the appeal in time. The cause pleaded by the petitioner is that the seventh defendant,



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predecessor of the civil revision petitioner, had passed away and they had entered into negotiation with the plaintiff for the purpose of settling the matter, once and for all.

8. The plea that the civil revision petitioner's husband had passed away is not in dispute. He had passed away some time in 2015. The final decree was passed on 28.09.2015. Even if I were to give credit from 2015 till the execution petition was filed in 2016, I am still not able to see any sufficient cause from the year 2016 till 2018, when the appeal was filed. This is because by that time, the respondents/plaintiff had presented E.P.Nos.20 and 21 of 2016 on the file of the Subordinate Court, Mahe, for delivery of possession and attachment.

9. It is possible that, the civil revision petitioners and the decree holder, might have entered into compromise talks as they are close relatives. It is also possible that the civil revision petitioners might have been under the impression that plaintiffs will settle the matter once for all. However, this impression cannot continue after the decree holder had presented execution



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petitions for delivery of possession and for attachment of property. The delay between 2016 and 2018 remains unexplained. This aspect has been pointed out by the learned District Judge in paragraph 8 of the impugned order.

10. The plea of Mr.Thiagarajan, that an appeal is pending as against the preliminary decree in A.S.No.18 of 2013 before the II Additional District Judge, Puducherry, is noted by this Court. In case the said appeal is allowed, all the proceedings that have taken place on the basis of preliminary decree would be nullified. Leaving it open to the civil revision petitioner to agitate the correctness of the preliminary decree in the aforesaid first appeal, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.11.2024

Index : Yes / No
Internet: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To
The Principal District Judge, Puducherry.



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V.LAKSHMINARAYANAN, J.,

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