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C.R.P. No.3030 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.08.2024

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. No.3030 of 2024 and C.M.P. No.16305 of 2024

1.Govindasamy @ Ramasamy

2.Subramaniam

... Petitioners

VS

1.Kaliammal

2.Poovathal

3.Sarojini

4.Rathinambal

5.Devasundari

6.Kaliammal @ Kaliathal

7.Rasu @ Moorthy

8.Velusamy

9.Babu @ Gopalakrishnan

10.The President,

Common Wastage Water Recycling Plant,
Angeripalayam, Tiruppur District.

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 13.09.2023 passed by the learned Additional Subordinate Judge of Tiruppur in I.A. No.42 of 2019 in O.S. No.111 of 2008.



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For petitioners : Mr.V.Nicholas

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ORDER

This civil revision petition has been filed against the order dated 13.09.2023 passed by the learned Additional Subordinate Judge, Tiruppur, in I.A. No.42 of 2019 in O.S. No.111 of 2008, dismissing the application filed under Section 5 of the Limitation Act to condone the delay of 152 days in filing an application under Order IX Rule 3 of C.P.C. to set aside the exparte decree.

2.The brief facts of the case are as follows:

The respondents 1 to 3/plaintiffs have filed O.S. No.111 of 2008 for the relief of partition and separate possession. It is the case of the petitioners that the case was posted for evidence on their side and during such time, the original Will could not be traced and thereby, their counsel has reported no instructions and they were set exparte on 12.03.2018. It is the further case of the petitioners that after due search, the Will had been traced and that they are ready to file the Will as evidence in the Court and thereby, they have filed an application to condone the delay of 152 days in filing an application under Order IX Rule 3 of C.P.C. to



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set aside the exparte decree, which was passed on 12.03.2018.

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3.The respondents 1 to 3/plaintiffs had filed a counter contending that the trial had been completed and judgment was pronounced and challenging the said judgment, an appeal was filed. Only after issuance of the summons in the appeal, the petitioners have come before this Court.

4.The claim of the petitioners is that they were not aware of the judgment passed by the Trial Court. The Trial Court, after finding that the suit was decreed on 13.03.2018 after full trial and also finding that the suit was posted for cross examination of DW1 and since he has not appeared, he was set exparte on 07.03.2017 and thereafter, the evidence of the other defendants were adduced and after finding that a preliminary decree has been passed on contest, had dismissed the application as not maintainable.

5.Learned counsel for the petitioners would further submit that the original Will, which was essential to prove the case of the petitioners, was missing and thereby, the petitioners were unable to let in evidence at the time when the petitioners were set exparte and only after tracing the Will,



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the petitioners have filed an application seeking to set aside the exparte order and thereby, seeking to set aside the order impugned, they have filed the above civil revision petition.

6.Heard the learned counsel for the petitioners and perused the evidence available on records.

7.The petitioners are defendants 2 and 3. It is seen that on the side of the defendants, the second defendant has let in evidence as DW1. Thereafter, when the case was posted for cross examination of the first petitioner, he had not appeared on many hearings and later on 07.03.2017, since the first petitioner had remained absent, he was set exparte and subsequently, the evidence of defendants 4 to 8 had been adduced through DW2 and they were also cross examined. The Trial Court finding that since the other defendants had let in evidence and the preliminary decree has been passed only after recording of evidence, it cannot be treated as an exparte order, had rightly dismissed the application seeking to condone the delay of 152 days in filing the application under Order IX Rule 3 of C.P.C. to set aside the exparte decree.



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WEB COPY 8. Since the petitioners have not shown any sufficient cause for their non-appearance, I do not find any illegality or infirmity in the order passed by the Trial Court. Accordingly, this revision petition stands dismissed. Consequently, connected C.M.P. is closed. No costs.

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Index: Yes/No
vga/raa

To
The Additional Subordinate Judge, Tiruppur

A.D.JAGADISH CHANDIRA, J.



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