



WEB COPY



CRP No.4614 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.4614 of 2023 and
CMP No.27531 of 2023

1. Cheluvamma @ Gowramma
2. S.Jayaprakash
3. S.Raghavendra
4. S.Soundaravalli

... Petitioners

Vs.

M/s Ganga Cauvery Resorts and Agrofarms,
rep. by its Partner Sunil Kumar Patwa,
s/o Bahadurmal Patwa, aged about 58 years,
residing at TNHB Colony, Bagalur Road,
Hosur Town and Taluk, Krishnagiri District.

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 30.08.2023 in I.A.No.1/2021 in O.S.No.244/2019 on the file of the Principal Subordinate Judge, Hosur, as it is illegal and incompetent.

For Petitioners

: Ms.V. Srimathi



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ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned Principal Subordinate Judge, Hosur, in I.A.No.1 of 2021 in O.S.No.244 of 2019 dated 30.08.2023.

2. The petitioners herein are the plaintiff, who filed the above suit for declaration of title over the suit property and for permanent injunction, against the respondent herein/defendant. Pending suit, the respondent was set exparte and exparte decree was passed on 09.10.2020. Subsequently, the respondent has filed an application under Section 5 of the Limitation to condone the delay of 44 days in filing a petition to set aside the exparte decree. The above application was allowed by the Trial Court. Challenging the same, the instant civil revision petition has been filed.

3. Heard the learned counsel for the petitioners and I have perused the materials on record.



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4. The facts reveals that the petitioners had filed the above suit for declaration of title and pending suit, exparte decree was passed on 09.10.2020 against the respondent/defendant herein. Subsequently, the respondent had filed an application to condone the delay of 44 days in filing an application to set aside the exparte decree, stating that he was suffered by Covid-19 and hence, he was not able to attend the Court and the same was allowed by the Trial Court. The contention of the petitioners/ plaintiffs is that, without any material to prove his illness, he had filed the condone delay petition, only to protract the proceedings, however, the Trial Court has not considered the above aspect and has allowed the application. It appears from the materials that, already, an exparte decree, passed at the initial stage of the suit was set aside, on petition filed by the respondent/defendant herein. Again the respondent/defendant was set exparte and exparte decree was passed. However, since the petitioners/ plaintiffs have filed the suit for declaration of title over the property, and when the respondent/defendant pleaded that due to Covid-19, he had taken treatment and hence, could not attend the court, one more opportunity should be given to him to contest the



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suit and to prove his case. In such circumstances, this court is of the view that the Trial Court has rightly extended its discretion in favour of the respondent/defendant, even though, no sufficient reason was assigned by him for the delay. Hence, there is no reason to interfere with the impugned order passed by the Trial Court and the civil revision petition is liable to be dismissed.

5. In fine, this Civil Revision Petition is dismissed and the impugned order passed by the Trial Court in I.A.No.1/2021 in O.S.No.244/2019, dated 30.08.2023 is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

08.01.2024

Index: Yes/No
Internet: Yes/No
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To

1. The Principal Subordinate Judge, Hosur.

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