



WEB COPY



C.R.P.(PD).No.4151 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.4151 of 2019
and C.M.P.No.27013 of 2019

1.Sellammal

2.Palaniammal

3.Arukkani

4.Chinnammal

... Petitioners

VS

1.Palanisamy (Died)

2.Sellammal

3.Sumathi

4.Vijayarani

5.Selvi

... Respondents

(Respondent-1 died. Respondents 4 and 5 are brought on record as LR's of the deceased R-1 viz., Palanisamy vide Court order dated 19.02.2024 made in CMP.No.2013/2024 in CRP.No.4151/2019)



C.R.P.(PD).No.4151 of 2019

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the Fair and Decreetal order of Principal Subordinate Judge, Namakkal dated 03.07.2019 passed in I.A.No.3 of 2019 in O.S.No.57 of 2011.

For Petitioners : Mr.C.Gunasekaran
for M/s.I.Abrar Mohamed Abdullah

For R2 to R5 : Mr.S.Vijayanand
for M/s.S.Balasubramanian

For R1 : Died

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court allowing the application filed by the respondents 1 to 3 to condone the delay of 429 days in filing the petition to set aside the *exparte* decree.

2. The petitioners herein filed a suit for partition against the respondents 1 to 3 and other defendants. In the said suit, an *exparte* preliminary decree was passed on 27.02.2015. Thereafter, the respondents 1 to 3 herein filed an application to set aside the *exparte* decree on 01.06.2016 with a delay of 429 days. In the affidavit filed in support of the condone delay petition, it was stated by the respondents 1 to 3 that the delay in filing the



C.R.P.(PD).No.4151 of 2019

petition was neither wilful nor wanton and that they had got very good case on merits.

3. Having regard to the fact the suit is for partition, the Trial Court had taken a very liberal approach and allowed the application and condoned the delay on condition that the respondents 1 to 3 should make a payment of Rs.5,000/- as cost to petitioners. Aggrieved by the same, the petitioners are before this Court.

4. The learned counsel appearing for the petitioners vehemently contended that the respondents 1 to 3 failed to show any sufficient cause for condoning the delay of 429 days and therefore, the Trial Court ought not to have allowed the application.

5. Having regard to the relief sought for in the suit (i.e., partition), the Trial Court had taken a liberal approach and exercised the discretion in favour of respondents 1 to 3. Therefore, this Court is not inclined to interfere with the order passed by the Trial Court condoning the delay. However, this Court



C.R.P.(PD).No.4151 of 2019

deems it appropriate to direct the respondents to pay cost of Rs.15,000/- to the petitioners as a condition for condoning the delay. It is stated by the learned counsel for the respondents 2 to 5 that costs of Rs.5,000/- was already paid and hence, the respondents are directed to deposit a further sum of Rs.10,000/- to the credit of O.S.No.57 of 2011 on the file of Principal Subordinate Court, Namakkal within a period of two weeks from the date receipt of copy of this order. On such payment, the benefit of impugned order will enure to the respondents 2 to 5. The petitioners are also permitted to withdraw the amount deposited by the respondents.

6. In case, the respondents failed to deposit the further sum of Rs.10,000/- as directed in this revision, the benefit of the impugned order will not enure to the respondents and I.A.No.3 of 2019 filed by the respondents 1 to 3 will get automatically dismissed. Accordingly, the Civil Revision Petition stands disposed of with above directions.

7. Having regard to the fact the suit is of the year 2011, the Trial Court



C.R.P.(PD).No.4151 of 2019

is directed to dispose of the suit as expeditiously as possible. No costs.

WEB C

Consequently, the connected miscellaneous petition is closed.

26.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The Principal Subordinate Judge,
Namakkal.



WEB COPY



C.R.P.(PD).No.4151 of 2019

S.SOUNTHAR, J.

dm

C.R.P.(PD).No.4151 of 2019

26.02.2024