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C.R.P. (PD) .No.4941 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4941 of 2024

and

C.M.P.No.27831 of 2024

1.Mahalingam

2.Ponnusamy

3.Mariyappan

4.Govindammal

.. Petitioners

Vs.

Amaravathi

.. Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order in I.A.No.03 of 2024 in O.S.No.51 of 2012 dated 24.09.2024 passed by the learned Principal District Judge, Dharmapuri and thereby allow the Civil Revision Petition.

For Petitioners

:

Mr.B.Gopalakrishnan



C.R.P. (PD) .No.4941 of 2024

ORDER

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This civil revision petition arises against the order of the learned Principal District Judge, Dharmapuri, in I.A.No.3 of 2024 in O.S.No.51 of 2012, dated 24.09.2024.

2.O.S.No.51 of 2012 is a suit for partition and separate possession launched by the daughter against her father, mother and siblings.

3.Opportunity was granted to the defendants to file a written statement. They did not file any written statement. The Court was left with no other option than to proceed *exparte*. Finally, it decreed the suit on 06.09.2014.

4.Nothing was done by the defendants from 06.09.2014 till 29.01.2024. On that day, they have filed an application to condone the delay of 3402 days in filing the application to set aside the *exparte* decree passed on 06.09.2014. The reason given for setting aside the *exparte* decree is that the deceased 1st defendant was taking care of the litigation and he was



affected with Chickungunya and other ailments, the defendants could not file a written statement. They pleaded that the 1st defendant passed away subsequently. The defendants to 3 to 6 came to know about the partition suit only when the final decree application in I.A.No.2 of 2023 was served on them. After receipt of the counter, the learned District Judge dismissed the application. Hence, this revision.

5.I heard Mr.B.Gopalakrishnan for the civil revision petitioners.

6.Mr.B.Gopalakrishnan states that the schedule mentioned properties 1 to 43 are available for partition, whereas, the properties in Item Nos.44 to 48 are the self acquisitions of their parents and hence, it is not open for partition. He further points out that the father was suffering from various ailments and hence, he was not in a position to file a written statement. Hence, he pleads that the delay may be condoned and defendants 3 to 6 be given an opportunity to contest the suit.

7.I have carefully considered the arguments of Mr.B.Gopalakrishnan.



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8.Length of delay does not matter while considering an application under Section 5 of the Limitation Act. The facts pleaded to condone the delay should be sufficient. The reason pleaded for condonation of delay is that the 1st defendant was suffering from chickungunya in the year 2014. He passed away in the year 2020. There is absolutely no explanation as to why the 1st defendant did not take any steps for a period of six years. Apart from that, it is not in dispute the 1st defendant passed away on 31.03.2020. As to what the defendants 3 to 6 were doing from March, 2020 till January, 2024 has also not been explained.

9.When there is no explanation for the delay, the Court cannot exercise the power to condone the delay for the mere fact that the parties are relatives. Though the defendants 3 to 6 have pleaded that there was a family panchayat to settle the issue, absolutely no evidence has been submitted before the learned Trial Judge to substantiate the plea. Condonation of delay is not for the asking. There should be sufficient cause. Sufficient cause is *sine qua non*, in order for a Court to exercise the jurisdiction under Section 5 of the



C.R.P. (PD) .No.4941 of 2024

Limitation Act. When I do not find any sufficient cause, I am not in a position to rescue Mr.B.Gopalakrishnan's client.

10.In the result, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

17.12.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Principal District Judge,
Dharmapuri.



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C.R.P. (PD) .No.4941 of 2024

V.LAKSHMINARAYANAN, J.

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C.R.P.(PD).No.4941 of 2024

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