



C.R.P.(PD)(MD)No.66 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2024

CORAM:

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD)No.66 of 2020
and C.M.P.(MD)No.331 of 2020

C.Dhanam @ Chinnakannu (died)

1.C.Ponnaiah Velalar

2.C.Mathi Alagan

3.C.Subbiah Velalar @ Arumugam

... Petitioners

Vs.

1.Mrs.M.Savithiri

2.Mrs.P.Lakshmi

... Respondents

PRAYER : Petition filed under Article 115 of the Constitution of India, praying to set aside the Fair and Decreetal order passed in I.A.No.144 of 2016 in O.S.No. 56 of 2008 on the file of the Hon'ble Additional Sub-Judge, Pudukkottai, dated 18.09.2019.

For Petitioners : Mr.Babu Rajendran

For Respondents : Mr.G.Mathavan for R2
No Appearance for R1

Page 1 of 6



C.R.P.(PD)(MD)No.66 of 2020

WEB COPY

ORDER

This Civil Revision petition is filed aggrieved by an order passed by the learned trial Court in I.A.No.144 of 2016, dated 18.09.2019, wherein, the learned trial Court refused to condone the delay of 230 days in filing an application to set aside the *ex parte* preliminary decree dated 17.11.2014 passed in O.S.No.56 of 2008.

2. The said O.S.No.56 of 2008 was filed seeking partition of the suit schedule properties and the suit was decreed *ex parte*. It is contended by the petitioners that the suit notice was not properly served upon them as they were not residing in the addresses mentioned in the plaint. It is also further contended that they have migrated to other places in search of their livelihood and they were unaware of the suit proceedings during the pendency of the same and it is only after receipt of the notice in the final decree proceedings, they came to know about the *ex parte* decree passed by the learned trial Court. However, the learned trial Court taking notice of the fact that the petitioners herein have



C.R.P.(PD)(MD)No.66 of 2020

WEB CDR

already entered appearance in the final decree proceedings, but long thereafter, they have initiated steps for setting aside of the *ex parte* decree, refused to condone the delay.

3. Considering the fact that the suit is among the close relatives, this Court is of the view that it would be appropriate to afford them an opportunity to contest the matter on merits instead of denying them the said opportunity on the ground of technicality, by duly putting the petitioners on appropriate terms. Endeavour of the Courts should always to see that substantial justice is done.

4. Accordingly, the order under revision is set aside and consequently, I.A.No.144 of 2016 is allowed condoning the delay of 230 days in filing an application to set aside the *ex parte* decree dated 17.11.2014 in O.S.No.56 of 2008, subject to the petitioners paying an amount of Rs.5,000/- (Rupees Five Thousand only) towards costs to the plaintiffs through the learned counsel for the respondents herein, within a period of four weeks from today. Taking into consideration the fact that the suit is of the year 2008, the learned trial Court is



C.R.P.(PD)(MD)No.66 of 2020

WEB CDRM

directed to dispose of the said suit as expeditiously as possible at any rate, within a period of six months from the date of restoration of the suit, if the same is restored.

5. Accordingly, this Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

15.02.2024

Neutral Citation: Yes / No
Index : Yes / No

vsm



C.R.P.(PD)(MD)No.66 of 2020

WEB COPY

To

- 1.The Additional Sub-Judge, Pudukkottai.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P.(PD)(MD)No.66 of 2020

MUMMINENI SUDHEER KUMAR, J.

vsm

C.R.P.(PD)(MD)No.66 of 2020

15.02.2024