



WEB COPY

C.R.P(MD)No.239 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

**C.R.P(MD)No.239 of 2022
and
C.M.P.(MD)No.1056 of 2022**

Chinnappan

... Petitioner / Petitioner / Appellant

Vs.

1.Sellammal

2.Vasavi

3.Amutha

4.Krishnaveni

5.Chandrasekar

...Respondents/Respondents /Respondents

Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying this Court to set aside the fair and decreetal order dated 19.11.2021 made in I.A.No.1 of 2020 in A.S.SR.No.3585 of 2020 on the file of the District Court, Karur and allow this Civil Revision Petition.

For Petitioner

: Mr.R.Devaraj

For Respondents

: Mr.N.Marimuthu

for Mr.A.Chandrakumar

ORDER

The Civil Revision Petition arises out of the fair and decreetal order passed by the learned District Judge, Karur in I.A.No.1 of 2020 in A.S.SR.No.3585 of 2020.



2.In the said application, the prayer of the petitioner was to condone the delay of 1504 days in preferring the appeal. The said petition was contested by the respondents and by the order assailed in the civil revision petition was dismissed by the lower appellate Court.

3.Heard Mr.R.Devaraj, learned counsel appearing for the petitioner and Mr.N.Marimuthu, learned counsel appearing for the respondent.

4.The learned counsel appearing for the petitioner would contend that the suit itself was bad for non-joinder of necessary parties as well as for partial partition. This apart, an Item No.10 was also wrongly included in the suit. Even the shares have not been properly reckoned. In as much as, these properties are ancestral in nature and the plaintiff if at all can claim share only as against the part alone, whereas the entire property has been ordered to be divided as between the plaintiffs and the defendants. He would strongly rely upon the judgment of this Court in C.R.P(NPD)No.4797 of 2017 to contend that this Court has already categorically held that the parties should not suffer on the fault of the counsel and therefore, one opportunity should be granted to the petitioner to contest the judgment of the trial Court and assail the same on merits.



5.Per contra, the learned counsel appearing for the petitioner would submit that none of the reasons mentioned in the affidavit filed in support of the petition, can be accepted as sufficient reason for condoning the delay.

He would submit that the delay is huge. The parties were contesting the final decree proceedings. Therefore, this Court has nothing to interfere with.

6.The learned counsel also submit that the petitioner did not move a little finger even to produce an iota in evidence by way of medical certificate or prescription to prove the medical grounds raised by the petitioner.

7.I have considered the submissions made on either side and perused the material records of the case.

8.On perusal of the nature of the suit, it can be seen that it is in the nature of partition. When the arguments are made before this Court that all the properties are ancestral in nature, such a plea has not been specifically taken in the written statement also. I have also gone through the various grounds of appeal raised in A.S.SR.No.3585 of 2020, the same relates to non-joinder of parties as well as the non-joinder of item of properties relating to partial partition.



9. In that background, I considered the affidavit filed in support of the application, the reasons mentioned in Para No.3 are extracted hereunder:

“3..... But, my counsel did not inform about the receipt of the certified copies and did not inform about the necessity of filing appeal and the time limit for filing appeal. Thus, I have been under the impression that my counsel might have filed the appeal and inform about the appeal number and hearing date.....”

10. Even taking that reason as factually correct, the same cannot be a sufficient reason for condonation of delay. As in this case, it is not the counsel fault, but it is the duty of the party to be vigilant as to what is the stage of the case and what happened to the copy application. As rightly contended by the learned counsel for the petitioner, the reasons mentioned in paragraph No.4 relating to the medical reasons are not substantiated by any evidence. When the period of delay is huge as 1058 days, the parties should have taken care to let in such evidence.

11. Considering the fact that simultaneously the final decree proceedings were going on, I am of the view that it is not a fit case to substitute the discretion exercised by the lower Court. When the reasons given by the trial Court are justifiable, I am unable to interfere with the



order and come to the aid of the petitioner. In view thereof, finding no merits, the Civil Revision Petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

02.07.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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To

1.The District Judge,
Karur.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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D.BHARATHA CHAKRAVARTHY, J.

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