



C.R.P. (MD) No. 385 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2024

CORAM

**THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY**

C.R.P. (MD) No. 385 of 2023

and

C.M.P. (MD) No.1870 of 2023

- 1.Ramachandran
- 2.Aalagumadan
- 3.Murugan
- 4.I.Madasamy Nadar
- Balasubramanian (Died)
- 5.Rajendran
- 6.Madasamy
- 7.Rajendhra Nadar
- 8.Pillaiyar Nadar
- 9.C.Gurusamy

... Petitioners/Defendants/  
Plaintiffs

-VS-

- 1.Tahsildar,  
Taluk Office,Sivagiri Taluk,  
Sivagiri.
- 2.Government of Tamil Nadu,  
rep. by its District Collector,  
Tenkasi District.

... Respondents/ Petitioners/  
Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 08.12.2022 passed in I.A.No.4 of 2022 in O.S.No.156 of 2014 on the file of the Additional District Munsif cum Judicial Magistrate Court, Sivagiri.

For Petitioners : Mr.F.X.Eugene

For Respondents : Mr.SRA.Ramachandran

Additional Government Pleader

### **ORDER**

The Civil Revision Petition is filed against the order dated 08.12.2022 made in I.A.No.4 of 2022 in O.S.No.156 of 2014. By the said order, the interlocutory application is filed by the respondents under Section 5 of the Limitation Act 1963, to condone the delay of 710 days in filing the application to set aside the *exparte* decree was allowed.

2. The learned Counsel appearing on behalf of the petitioners would submit that in the instant case, the petitioners had claimed title and the petitioners have also examined P.W.3, an official from the Tahsildar's office to prove that the petitioners alone are the owners of the property. They are using the same as a common pathway between themselves and no other third party



has any right, title or whatsoever in the common pathway. They are only pleading with the respondents to issue the joint patta in their name.

3. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents would submit that the entries in the revenue record stand in the name of different private persons. Therefore, unless the said private persons are also parties in the suit and the lis is decided between the plaintiffs and the private persons, a mandatory injunction which is now sought against the official respondents to alter the patta cannot be granted and therefore, to that limited extent, there is interest for the official respondents 1 and 2 to bring the said facts to the notice of the Court and therefore, they must be given one opportunity to contest the suit.

4. A perusal of the plaint itself it is clear that it is not the respondents 1 and 2 who are claiming any interest in the property or that they are interested in challenging the title of the petitioners. It seems to be a dispute between private individuals and therefore, when an *ex parte* decree is granted by arraying the official respondents alone as the defendants, I am of the view that one opportunity has to be given for the official respondents to place the said facts before the Trial Court. The Trial Court has also considered the reasons



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mentioned in the affidavit filed in support of the application and consider the same as sufficient reasons and condoned the delay.

5. I do not find any compelling reasons to interfere with the discretion exercised by the Trial Court. Accordingly, finding no merits, the Civil Revision Petition is dismissed. In view of the fact that the delay is now condoned, the pending application for setting aside the *exparte* decree under Order IX Rule 13 of CPC, shall also stand allowed given the fact that the respondents have already filed the written statement. The said written statement can be taken on file and the suit can be further proceeded with in accordance with law. Consequently, the connected Miscellaneous Petition is closed. No costs.

**25.07.2024**

NCC : No

PKN



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To



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**D.BHARATHA CHAKRAVARTHY, J.**

PKN

1. The Additional District Munsif cum Judicial Magistrate Court,  
Sivagiri.

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