



C.R.P.(PD)(MD) No.385 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 19.02.2024

ORDERS PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD) No.385 of 2020

and

C.M.P.(MD) No.2300 of 2020

Balammal

... Petitioner/1st Respondent/
1st Respondent

Vs.

1.Mariammal

2.Packiam

3.Anandham

4.Muthukumar

5.Selvakumar

6.Ravi

7.Antony Ammal

... Respondents 1 to 7/
Petitioners/Appellants 1 to 7

Asirvatham (Died)

... --/8th Respondent/8th Appellant

8.Seethai



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9.Arumaikodi

10.Banumathi

11.Arumainayagam

12.Jeya

13.Minor Mukila

14.Minor Magendran

... Respondents 8 to 14/
Respondents 2 to 8/
Respondents 2 to 8

[Respondents 13 and 14 represented through their mother and natural guardian 12th respondent herein]

[Respondents 8 to 14 are not contesting party, hence notice on them may be dispensed with]

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 18.09.2019 made in I.A.No.72 of 2016 in Unregistered A.S.No. ---- of 2016 on the file of the Principal Subordinate Judge, Tirunelveli.

For Petitioner : Mr.H.Arumugam

For RR1, 2 & 5 to 7: Mr.D.Rajkumar

For RR3 & 4 : Mr.S.Velrajan



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ORDER

This civil revision petition is directed against an order dated 18.09.2019 passed in I.A.No.72 of 2016 in an unregistered A.S.No.-- of 2016 by the learned Principal Subordinate Judge, Tirunelveli.

2. The said application was filed by Respondents No.1 to 7 and another seeking condonation of delay of 611 days in filing the first appeal against the final decree passed in a suit filed for partition. The learned lower appellate Court, having taken note of the totality of circumstances, especially having come to a conclusion that there is something for consideration on merits in the first appeal and also having taken note of the decisions of the Hon'ble Apex Court in the cases of *Manoharan vs. Sivarajan and others* reported in (2014) 4 SCC 163 and *K.Subbarayudu and others vs. Special Deputy Collector (Land Acquisition)* reported in (2017) 12 SCC 840, exercised its discretion and allowed the application seeking condonation of 611 days, while imposing costs of Rs.5,000/- in favour of the petitioner and Respondents No.8 to 14 herein. The said costs



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amount of Rs.5,000/- was deposited by Respondents No.1 to 7 to the credit of the suit within the time. Aggrieved by the said order, the petitioner herein approached this Court by filing the present civil revision petition. The other Respondents No.2 to 8 in I.A.No.72 of 2016 have not chosen to contest the order under revision.

3. The learned counsel for the petitioner contended that Respondents No.1 to 7 failed to explain the day-to-day delay for all the 611 days and on the other hand, they have actively participated in the appointment of Advocate Commissioner and during the inspection made by the Advocate Commissioner and further, they also participated in the execution proceedings, after passing of the final decree and contested the execution petition and thus, they are fully aware of the final decree passed by the Court. But, for the reasons best known, they have not chosen to file appeal within time against the final decree passed in the suit. But the learned lower appellate Court without taking into consideration any of the contentions raised by the petitioner herein, allowed the application condoning the delay of 611 days.



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4. The learned counsel for the petitioner also placed reliance on various decisions of the Hon'ble Apex Court in the cases of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others*** reported in (2013) 12 SCC 649; ***H.Dohil Constructions Company Private Limited vs. Nahar Exports Limited and another*** reported in (2015) 1 SCC 618; and ***P.K.Ramachandran vs. State of Kerala and another*** reported in (1997) 7 SCC 556.

5. On the other hand, learned counsel appearing for Respondents No. 1 to 7 contended that the entire suit proceedings and final decree proceedings were taken care of by the 3rd defendant alone on behalf of the other defendants and immediately after passing of the final decree and before filing the first appeal, the 3rd defendant passed away and hence, the legal heirs of the 3rd defendant joined the other defendants and filed the appeal before the learned lower appellate Court along with an application for condonation of delay of 611 days. It is further contended that Respondents No.1 to 7/petitioners have all through been serious about



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settling the matter amicably and they have been making efforts all through, but the same remained unsuccessful and they have very short grievance against the final decree in connection with the manner in which the shares were allotted to respective parties and therefore, they have preferred the appeal.

6. The learned counsel for Respondents No.1 to 7 also placed strong reliance on the two decisions, which were relied upon by the learned lower appellate Court in the impugned order.

7. This Court has carefully considered the submissions made on either side and also perused the material on record including the order under revision.

8. The preliminary decree of partition passed in the suit has become final and the final decree proceedings have already concluded and the final decree was also executed. The grievance of Respondents No.1 to 7 is only in connection with the manner in which certain shares were allotted to the



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respective parties in the final decree proceedings. If the said aspect is considered by the learned lower appellate Court afresh, on the appeal filed by Respondents No.1 to 7 by condoning the delay of 611 days, no prejudice would be caused to the petitioner herein, as the said final decree was already executed and respective parties were also put in possession of their respective shares and hence, filing of the appeal and pendency of the appeal will not cause any prejudice to the petitioner herein. Further, the learned lower appellate Court having taken note of the totality of circumstances, came to the conclusion that there is something to be considered in the appeal.

9. Then coming to the decisions relied upon by the learned counsel for the petitioner are concerned, the Hon'ble Apex Court in the said decisions have laid down the principles that it is incumbent upon the Court considering an application for condonation of delay to see whether the said delay is a result of negligence, default or inaction of the party or because of the compelling circumstances beyond the control of such parties and also laid down a principle that a distinction must be drawn between a case where



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the delay is inordinate and a case where the delay is a few days. If the delay is inordinate, then the next question that would arise for consideration is whether any prejudice would be caused to the opposite party, if the delay is condoned. As held by the Hon'ble Apex Court in the above decisions, each case has to be considered on its own facts and circumstances.

10. Insofar as the decision in ***P.K.Ramachandran vs. State of Kerala and another*** (*supra*) is concerned, the said decision was rendered by the Hon'ble Apex Court in the facts and circumstances of the said case and having taken note of the averments made in the affidavit filed in support of the condone delay application, the Hon'ble Apex Court came to the conclusion that the reason assigned in the said affidavit is insufficient. Therefore, the same is of no aid to advance the case of the petitioner.

11. This Court has considered the two decisions of the Hon'ble Apex Court in ***Manoharan vs. Sivarajan and others*** (*supra*) and ***K.Subbarayudu and others vs. Special Deputy Collector (Land Acquisition)*** (*supra*), which



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were followed by the learned lower appellate Court while passing the order under revision and is fully convinced that the said decisions have full application to the case on hand and the learned lower appellate Court rightly applied the said decisions and exercised its discretion in condoning the delay of 611 days.

12. In the light of the above and also considering the limited scope of revisional jurisdiction under Article 226 of the Constitution of India, this Court does not find any error or illegality in the order under revision and accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.03.2024

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

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MUMMINENI SUDHEER KUMAR, J.

abr

To

The Principal Subordinate Judge,
Tirunelveli.

Pre-delivery Order made in
C.R.P.(PD)(MD) No.385 of 2020

26.03.2024