



C.R.P.(MD).No.927 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.07.2024

DELIVERED ON: 08.07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.927 of 2019

Shunmugam(died)

2.S.Vasanth

3.S.Venkadesh

4.S.Saranya

...Petitioners/Petitioners

(Petitioners 2 to 4 are brought on record as legal heirs
of the deceased sole petitioner vide Court order dated
08.12.2022)

Vs

1.S.Murugammal

2.S.Kuppammal

3.Thangam

4.Gomathy

5.Nagarajan

...Respondents/Respondents



C.R.P.(MD).No.927 of 2019

WEB COPY

PRAYER: The Civil Revision Petition has been filed under Section 115 of Civil Procedure Code to call for all the records and pleaded to set aside the order in I.A.No.46 of 2017 in unregistered appeal suit 21.12.2018 on the file of the Principal Subordinate Judge at Tirunelveli.

For Petitioners	: Mr.D.Vijay Antony
For R1 to R3 & R5	: No appearance
For R4	: M/s.K.R.Shivashankari

ORDER

The present revision petition has been filed by the plaintiff in a suit for partition challenging the dismissal of his condone delay application in filing the first appeal.

2.The suit for partition filed by the revision petitioner herein was dismissed by the trial Court on 26.04.2011. The plaintiff had preferred the first appeal before the Principal Sub Court, Tirunelveli on 03.03.2015 with a delay of 916 days. A perusal of the affidavit in the condone delay application reveals that the revision petitioner had received a copy of the judgment and decree in August 2011 and he had misplaced the same. Due to pressure of work, he was unable to trace the said judgment and decree



C.R.P.(MD).No.927 of 2019

for presenting it to the counsel for filing an appeal. He had further contended that based upon the xerox copy, an appeal was filed on 03.03.2014. Thereafter, he had applied for the certified copy and along with the certified copy, the appeal was presented on 19.08.2014. Hence, there is a delay of 916 days in filing the first appeal.

3.Though the respondents were served, they have not entered appearance before the Appellate Court and they have been set exparte.

4.The Appellate Court had dismissed the condone delay application on the ground that the reason assigned by the appellant that he had misplaced the judgment in his own house is not believable. The Appellate Court arrived at a finding that no sufficient cause has been assigned for the delay and dismissed the application. Challenging the same, the present revision petition has been filed.

5.The learned counsel for the petitioner had contended that the suit for partition has been dismissed without properly appreciating the merits of the case. He had misplaced the judgment and decree and therefore, he had applied for a fresh certified copy of the judgment and thereafter, filed the first appeal. He had further pointed out that the respondents in the appeal though served, they have not evinced any



C.R.P.(MD).No.927 of 2019

WEB COPY

interest to appear. Hence, he prayed for allowing the revision petition.

6.Per contra, the learned counsel appearing for the respondent strongly objected to condone the delay on the ground that the plaintiff is attempting to drag on the proceedings knowing fully well that he does not have a case on merits.

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

8.The revision petitioner herein has filed the first appeal with a delay of 916 days contending that he had misplaced the judgment and decree of the trial Court. He had also entered into the box and deposed as PW1 in the condone delay application in order to support his case. The respondents in the appeal have remained exparte despite receiving notice in the condone delay application.

9.Considering the fact that the suit for partition has been dismissed, no prejudice would be caused to the defendant in the suit in condoning the delay in filing the first appeal. However, considering the length of delay, this Court is inclined to impose a cost of Rs.2000/- to be paid to the 'High Court Legal Aid Services Committee' Madurai Bench of Madras High Court, Madurai' on or before 18.07.2024. If the cost is not



C.R.P.(MD).No.927 of 2019

paid by the revision petitioners within the time, the revision petition stands automatically dismissed without any further reference to this Court.

10.Post on 19.07.2024 for reporting compliance.

08.07.2024

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

To

1.The Principal Subordinate Judge at Tirunelveli.

2.The High Court Legal Aid Services Committee
Madurai Bench of Madras High Court,
Madurai

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD).No.927 of 2019

R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
C.R.P.(MD).No.927 of 2019

08.07.2024