



C.R.P. (NPD)(MD).No.1367 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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S.Syed Rafia
W/o.A.Syed Ahamed
Represented through her Power Agent,
A.Syed Ahamad,
S/o.E.S.M. Abubakar,
Door No.1/14, Eswaran Kovil,
1st Cross Street,
Porur, Chennai – 116.

... Petitioner/Petitioner/
4th Respondent/Legal Heir

-vs-

1. K.Varusai Mohideen

2. Abdul Kadar

... Respondents/Petitioners
Plaintiffs

(As 2nd Respondent was *ex parte* in
lower Court. Hence, the 2nd
respondent given up)

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair order and executable order dated 24.01.2024 passed in I.A.No.1 of 2020 in I.A.No.390 of 2005 in O.S.No.228 of 2005 on the file of the I Additional District Munsif, Tirunelveli.



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For Petitioner : Mr.S.Mahesh Babu

ORDER

The present Civil Revision Petition has been filed challenging the dismissal of an application to condone the delay of 4952 days in setting aside the *ex parte* final decree.

2. The revision petitioner herein is the legal heir of the defendant. In a suit for partition, *ex parte* preliminary decree came to be passed. Based upon the said *ex parte* preliminary decree, the decree holder had filed I.A.No.390 of 2005 for passing of final decree. Though the defendant had received notice in the said application, he has chosen to remain *ex parte*. Thereafter, the Commissioner was appointed and based upon the Report of the Commissioner, an *ex parte* final decree has been passed by the trial Court.

3. The present revision petitioner has filed the application to condone the delay of 4952 days in setting aside the *ex parte* final decree on the ground that even though he was aware of the passing of the final decree 2 ½ of years back, negotiation was going on for settling the issue out of the Court. Hence,



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believing the decree holder, he did not approach the Court in time. The trial Court has specifically found that the defendant dragged on the proceedings and despite having knowledge about the passing of the final decree, they have not chosen to approach the Court in time. Considering the huge delay of 4952 days, this Court is of the opinion that the trial Court has rightly dismissed the said application.

4. According to the learned counsel appearing for the revision petitioner, in view of the *ex parte* final decree, the property has been divided unequally and they have face to hardship. It is open to the present revision petitioner to file regular appeal, challenging the final decree, if she is so advised.

5. With the above said liberty, this Civil Revision Petition stands dismissed. There shall be no order as to costs.

27.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The I Additional District Munsif,
Tirunelveli.



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R.VIJAYAKUMAR,J.

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