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C.R.P.(MD)No.1389 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 26/03/2024

Date of Pronounced : 17/04/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P (MD) No.1389 of 2023

and

CMP (MD) No.6894 of 2023

Renuga Devi : Petitioner/Petitioner/
4th Defendant

Vs.

Velmurugan : Respondent/Respondent/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to set aside the order, dated 20/09/2022 passed in IA No.155 of 2019 in OS No.464 of 2004 on the file of the Principal District Munsif, Melur.

For Petitioner : Mr.V.N.Arjun
for Mr.N.Vallinayagam

For Respondent : No appearance

O R D E R

This civil revision petition is filed seeking an order to set aside the order, dated 20/09/2022 passed in IA No.155 of 2019 in OS No.464 of 2004 by the Principal District Munsif, Melur.



2. The facts in brief:-

Suit in OS No.464 of 2004 was filed by the respondent herein seeking the relief of partition and separate possession in respect of his 1/3rd share. The petitioner herein is the 4th defendant in the suit. She remained *ex-parte*. So she filed an application in IA No.1668 of 2018 along with the delay condonation application under section 5 of the Limitation Act, in 2014 itself. It was returned by the Registry on 10/06/2014. The returned papers could not be traced out and re-presented. She filed a memo before the trial court on 14/12/2017 to trace out the missing papers. Since it could not be traced out, filed an application to reconstruct the applications in IA Nos.1668 to 16620 of 2018. Those applications were dismissed, on 28/11/2018.

3.After that, the present petition in IA No.155 of 2019 was filed to condone the delay of 1830 days in filing the set aside petition. That was dismissed by the trial court.

4.Against which, this civil revision petition is preferred.



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5. Heard the learned counsel appearing for the petitioner. In spite of notice, the respondent has not chosen to appear. The respondent was set *ex-parte* before the trial court on 02/02/2013. To set aside the *ex-parte* decree, an application under section 5 of the Limitation Act and Order 9 Rule 13 CPC were filed. Numbered as IA Nos.1668 of 2018 and 1669 of 2018. To reconstruct the petitions, another application was filed. That was dismissed in IA No.1620 of 2018. So the other applications namely IA Nos.1668 and 1669 of 2018 were also closed on 28/01/2018. Later only the present petition came to be filed.

6. From the above said events, it is seen that because of the mistake committed by the office of the trial court, IA Nos.1668 of 2018 and 1669 of 2018 could not be brought to the Court for hearing. To reconstruct those petitions only, another application was filed. In all fairness, the trial court ought to have allowed the application and reconstructed the records and should have heard the petition. But in spite of that, it has chosen to dismiss the petition, which is not proper. Because of that, there is huge delay in preferring the second petition.



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7.The reason assigned by the trial court that the earlier applications dismissed, so the second application is not maintainable is absolutely not correct on record. Either, it ought to have reconstructed IA No.1668 of 2018 or ought to have granted liberty to the petitioner to file application on the same cause of action. But without making such orders, the petition has been straightaway dismissed stating that no proper reason has been assigned. For the mistake committed by the trial court office, the petitioner should not be penalized. On that ground, this revision is allowed on payment of cost of Rs.5,000/-.

8.In the result, this civil revision petition is **allowed** on condition that the petitioner must **deposit Rs.5,000/-** (Rupees Five thousand only) as cost to the credit of the case number before the trial court within a period of 30 days from the date of receipt of a copy of this order. The respondent is at liberty to move application before the trial court for claiming costs. Consequently, connected Miscellaneous Petition is closed.

17/04/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Principal District Munsif,
Melur.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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C . R . P (MD) No . 1389 of 2023

17/04/2024