



C.R.P(MD)No.1454 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.11.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.1454 of 2023

1.P.Murugan

2.Ganesan

3.Pattu Lakshmi

4.Kottaitthai

... Petitioners / Plaintiffs

Vs

Udaiyamai (died)

Mariappan (died)

1.Kottaisamy

2.Panakottai

3.Sanmugaiya

4.Sankarammal

5.Selvi

... Respondent Nos.1 to 5 / Defendant Nos.2 to 5
and 7th defendant

6.Jeyanthi

... 6th Respondent / Proposed 8th defendant

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Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to call for the records relating to the impugned fair and decreetal order in I.A.No.01 of 2022 in O.S.No.40 of 2013 dated 03.01.2023 passed by the learned Subordinate Judge, Sankarankovil, set aside the same.

For Petitioner : Mr.V.Sukumar

For R1 : Mr.M.Thirunavukkarasu

For R2 to R6 : No appearance

ORDER

This Civil Revision Petition is filed to call for the records relating to the impugned fair and decreetal order in I.A.No.01 of 2022 in O.S.No. 40 of 2013 dated 03.01.2023 passed by the learned Subordinate Judge, Sankarankovil, set aside the same.

2. The suit in O.S.No.40 of 2013 was filed by the revision petitioner herein against the respondent including the deceased respondent, seeking the relief of partition and separate possession of plaintiff's 1/11 share each and for cost. Relief was sought against the



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defendants 2 to 4. The defendants appeared and filed the written statement. When the matter was called on 19.08.2016, the defendants 1 to 7, were called absent and they were set ex parte. It is also mentioned that the 6th defendant namely Mariappan was dead. Steps were not taken for the deceased 6th defendant. The suit was dismissed for default. Against which, I.A.No.1 of 2022 was filed by the plaintiffs to restore the suit on file and there is a delay of 626 days in preferring the petition with the following averments:

(i) The above said fact was known to them only after the dismissal of the suit, stating that the defendant namely Ganesan went to Kerala for his work. Later returned to Tamilnadu only on 05.07.2018. When he contacted his advocate he was informed that the suit was dismissed for default.

(ii) That was resisted by the respondent herein by filing a counter. The trial Court after hearing both sides, passed an order dismissing the petition which is impugned in this petition. Against which this Civil Revision Petition is preferred.

3. Heard both sides.



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4. The main suit is one of partition and separate possession. The 6th defendant was reported to be dead. No step was taken by the plaintiffs to implead the legal representatives that is not the reason for the dismissal. When the matter was called by the trial Court, there was no representation on the side of the plaintiff. So it came to be dismissed for default. According to the defendants one Ganesan went to Kerala to eke out his livelihood and so the delay has occurred. Except stating that no such ground worth considering was made by the petitioners.

5. Learned counsel for the respondent would submit that eventhough Ganesan went to Kerala, what happened to other petitioners, was not stated by them. Even if Ganesan went to Kerala, the others would have prosecuted the matter. Having failed to prosecute the matter in a diligent manner, after remained silent for 626 days , this Civil Revision Petition came to be filed. According to him, no proper ground is made. He further referred to a judgment of this Court reported in **2024(2) CTC 197** in the case of **Chitravel and another Vs Jothimani** and contended that if no proper reason is assigned, then the order passed by the trial Court is perfectly legal which requires no interference.



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6. No doubt that the suit is one for partition and separate possession. But the fact remains that the petitioners remained ideal without contacting his advocate on record. Why they have not contacted the counsel on record in the meantime, is not explained by them. Mere bald averments are not sufficient to condone the delay. The trial Court after elaborate discussion on that issue, recorded a finding of fact that the reason assigned by the revision petitioner is not satisfactory. No other ground was advanced at the time of argument. Since sufficient ground or reason is not stated by the revision petitioners, I find absolutely no reason to interfere with the order in I.A.No.01 of 2022 in O.S.No.40 of 2013 dated 03.01.2023 passed by the learned Subordinate Judge, Sankarankovil.

7. Accordingly, this Civil Revision Petition is dismissed. No costs.

19.11.2024

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

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G.ILANGO VAN, J.

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To

- 1.The Subordinate Judge, Sankarankovil.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
C.R.P(MD)No.1454 of 2023

19.11.2024