



C.R.P.(NPD)(MD)No.1271 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.03.2024

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THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(NPD)(MD)No.1271 of 2021
and C.M.P.(MD)No.7322 of 2021

1.Thamos
2.Yovan
3.Samuvel
4.Chandra
5.Jeyarani

... Petitioners

Vs.

1.Sironmani Ammal
2.Jebakani

... Respondents

PRAYER: Petition filed under Section 115 of C.P.C. praying to set aside the fair order and decreetal order dated 01.04.2021 passed in I.A.No.1 of 2019 in O.S.No.25 of 2014 on the file of the District Munsif Court, Nanguneri.

For Petitioners : Mr.R.Mohanasundaram

For Respondents : Mr.S.R.Anbarasu for R1
R2 Died



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ORDER

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This Civil Revision Petition is directed against the order dated 01.04.2021 passed in I.A.No.1 of 2019 on the file of the Court of District Munsif, Nanguneri. The said application was filed by the petitioners herein seeking condonation of delay of 1057 days in filing an application under order 9 Rule 13 of C.P.C. seeking to set aside the ex parte decree dated 26.10.2016 passed in O.S.No.25 of 2014. The learned trial Court after having considered the contentions raised on behalf of the petitioners passed an elaborate order refusing to condone the delay of 1057 days on various grounds.

2. This Court heard the learned counsel for the petitioners as well as the learned counsel appearing for the first respondent.

3. From the material on record, it is evident that the petitioners herein who are the defendants in O.S.No.25 of 2014 were served with notice in the suit and accordingly, they have engaged a counsel in the suit. However, they have failed to file a written statement and therefore, they were set *ex*



parte on 24.06.2014. Thereafter also the learned trial Court waited for 2 years and after examining the witnesses of the plaintiff viz., P.W.1 to P.W.4 and after marking documents viz., Exs.A1 and A2 and Exs.X1 to X11, considered the matter on merits and passed a judgment and decree dated 26.10.2016.

4. The mother of the petitioners herein and the respondents herein are the own sisters and the claim of the first respondent / plaintiff is basing upon a registered Will executed by her maternal grandfather bequeathing the properties in favour of her three daughters including the mother of the petitioners herein. The said document, which is marked as Ex.A2, is a registered Will dated 25.06.1972. Even after the decree was passed on 26.10.2016, the respondents herein waited for a period of 1 year and then filed I.A.No.535 of 2017 for passing final decree. The petitioners, herein having received the notice in the said final decree proceedings, entered appearance through an advocate, but failed to file any counter affidavit and therefore, they were set *ex parte* once again in the said final decree proceedings and an advocate commissioner was appointed. That was in the year 2019.



5. Even thereafter also the petitioners having full knowledge about the preliminary decree that was passed on 26.10.2016, have not taken any steps for filing an application to set aside the *ex parte* decree till 2019. It is only in the year 2019, the petitioners herein filed an application under Order 9 Rule 13 of C.P.C. along with an application to condone the delay of 1057 days. Though it is pleaded that the ill health of the petitioners herein is the reason for the delay, no material is placed before the learned trial Court in support of such contention.

6. It is the further contention that they have no knowledge about the *ex parte* decree that was passed on 26.10.2016 and they came to know about the same, when the Advocate Commissioner, who was appointed in the final decree proceedings, inspected the suit scheduled properties. The said contention of the petitioners herein is false on the face of it, because they have in fact engaged a counsel in the original suit, but failed to file written statement and they have also received notices in the final decree proceedings in I.A.No.535 of 2017 and also engaged a counsel, but failed to file any counter affidavit. That was in the year 2017. Therefore, the contention that they came to know about the *ex parte* decree only when the



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Advocate Commissioner visited the suit schedule properties is totally false.

The learned trial Court also having taken into consideration all these aspects refused to condone the said delay. This Court is in full agreement with the reasoning and findings of the learned trial Court and does not find any reason to interfere with the discretion exercised by the learned trial Court, and the order under revision needs no interference of this Court under Article 227 of the Constitution of India.

7. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12.03.2024

NCC : Yes/No

Index : Yes/No

vsm

To

1.The District Munsif Court, Nanguneri.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

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MUMMINENI SUDHEER KUMAR, J.

vsm

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