



C.R.P.(MD)No.2346 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.2346 of 2022

1.Thangaraja

2.Arunasala Vadivoo ... Petitioners/Petitioners/Defendants

Vs.

1.Chandrasn (Died)

2.Raja

3.Durai Pandiyan ... Respondents/Respondents/1 to 3 plaintiffs

4.C.Lyisboy ... 4th Respondent

(4th respondent is brought on record as LR of the deceased 1st respondent vide Court order dated 30.08.2022 made in C.M.P.(MD).Nos.34, 37 & 39 of 2022 in C.R.P.(MD).No.Sr40645 of 2021.)

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to call for the records in pertaining to the order made in I.A.No.160 of 2018 in O.S.No.11 of 2017, which was dismissed by the order dated 21.01.2019, passed by III Additional District Judge, Tirunelveli and set aside the same.

For Petitioner : Mr.V.Sorimuthu

For Respondents : Mr.P.Subbiah



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ORDER

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This civil revision petition has been filed to set aside the order made in I.A.No.160 of 2018 in O.S.No.11 of 2017, which was dismissed by the order dated 21.01.2019, passed by III Additional District Judge, Tirunelveli.

2.The facts in brief:

I.A.No.160 of 2018 was filed by this revision petitioner with the following averments.

2.1.The main suit is one for partition and separate possession. The suit was posted for filing written statement on the side of the revision petitioner on 27.07.2017. On that date he was affected by Jaundice. So he could not prepare the written statement. So he was set exparte. After that final decree application was filed in E.A.No.21 of 2018, wherein, he received notice. Only on that date, he came to know that he was set exparte in the main suit. So there is a delay of 223 days in filing the exparte set aside petition. To condone the delay the above said petition was filed.

3.That was contested by the first respondent stating that no proper



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reason was assigned by the revision petitioner. To drag on the final decree proceedings, petition was filed.

4.After hearing both sides, the trial Court thought it fit to condone the delay on payment of cost of Rs.3,000/-, making the condition upon the revision petitioner to pay the same on or before 18.01.2019. It was called on 21.01.2019. On that date the conditional order was not complied. So it dismissed the petition, by the order dated 21.01.2019. Against which, this revision is preferred.

5.Heard both sides.

6.A preliminary objection was made by the respondents herein stating that since cost was not paid within the time stipulated, petition was dismissed. There is no illegality. If really the petitioner was not in position to comply the order, the petitioner ought to have file petition under Section 148 of CPC seeking extension of time, that was not done. Without exhausting those remedies straight away this revision has been preferred. It has been simply stated that he was aged about 76 years. Due



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to old age, he could not comply the condition. These grounds ought to have been raised by the revision petitioner before the trial Court as stated above.

7.Now final decree proceedings stated to be pending. Let the petitioner namely the revision petitioner herein workout his remedy in the final decree proceedings. Considering the fact that the suit is of the year 2017 and the preliminary decree was passed on 07.10.2017 and after that final decree proceedings also been initiated. So this revision reserves to be dismissed.

8.Accordingly, this revision petition stands dismissed. No costs.

12.11.2024

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



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To

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- 1.The III Additional District Judge, Tirunelveli.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

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