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C.RP(MD)No1501 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

C.R.P(MD)No.1501 of 2024

and

C.M.P(MD)No.8848 of 2024

1.S.Prabakaran

2.P.Prabavathy

... Petitioners/Petitioners/
Defendants 2 &5

Vs.

S.Murthy

...Respondent/Respondent/
Plaintiff

Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 03.06.2024 passed in I.A.No.4 of 2024 in O.S.No.309 of 2017 on the file of the learned Principal District Munsif, Trichirappalli and allow this revision.

For Petitioners

:Mr.C.Jeya Prakasu

ORDER

The Civil Revision Petition arises out of the fair and decreetal order of the learned District Munsif, Trichirappalli, dated 03.06.2024 made in



IA.No.4 of 2024 in OS.No.309 of 2017.

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2.The said Interlocutory Application is filed to set aside the ex-parte order made in the suit. The suit was filed for partition by the plaintiff against his father, brothers and their brothers' spouse claiming 1/4th share in the suit property. When the suit is being contested by the other defendants, when the suit summons were served and the case was posted for the appearance of the 2nd and 5th defendants on 14.07.2017, they did not appear before the Court and as such, they were set ex-parte and the suit is being proceeded with. Now, the plaintiff's side is over and at this stage, the application is filed on behalf of the petitioners to set aside the ex-parte order. The reason mentioned in the affidavit filed in support of the application is extracted here under:

“I humbly submitted that the above case was posted on 14.07.2017 for filing vakalath. Since I had not entered appearance on that date, the Hon'ble Court had passed ex-parte order against the petitioners. Actually, I was at Chennai with respect to the function of our family friend on that date in and so I could not keep my appearance before this Hon'ble Court. Hence, it is necessary that the ex-parte order has to be set aside. Hence, I am advised to file this application.”



3. Upon considering the reasons mentioned in the affidavit filed in support of the application and considering the fact that there is a humongous delay of 2436 days in preferring the application to set aside the ex-parte order, the trial Court dismissed the same. As against the same, the present Civil Revision Petition is filed.

4. The learned counsel appearing on behalf of the petitioners would submit that it is the case of the defendants 2 and 5 that the third defendant has already executed a settlement deed in favour of the 2nd defendant and therefore, they will be put to grave prejudice and hardship, unless and otherwise one opportunity is granted to them to lead evidence in the case. When the case is still pending and when the other defendants are contesting the suit, there will be no prejudice to the plaintiff's side in allowing the petitioners to contest the matter. The learned counsel would rely upon the judgment of this Court in *Rajasekar-vs-Govindammal and others*, reported in **2024 L.W 481**, more specifically on paragraph 24 to contend that in this case there is no question of Limitation Act being applicable and therefore, the trial Court ought to have considered the application filed by the petitioners. He would also fervently plead that since the parties are not very well educated and are only construction labour, one opportunity should be given to them. He would further submit that the suit property is the dwelling



house, in which, they are residing and therefore, the Court should take a a lenient view in allowing them to contest the suit.

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5.I have considered the said submissions made by the learned counsel for the petitioners.

6. There can be no quarrel over the proposition as laid down by this Court in *Rajasekar-Vs-Govindammal case* (cited supra) that the Limitation Act is not applicable to the application to set aside the ex-parte order, when the suit is being contested by the other defendants. But however, the law on the point is very well settled that the Court will consider the delay and laches on the part of the petitioners. In this case, there is a humongous delay of 2436 days in filing the application. The petitioners were served with the suit summons in the year 2017 and since they did not appear, they were set ex-parte and leisurely and casually, the application is being made in the year 2024, when the suit is posted for defendants' side evidence. The only reason which is given is that they had went for a marriage to Chennai, the day previous to 14.03.2017. Therefore, nothing prevented the defendants to apply to the Court for setting aside the ex-parte order on subsequent dates when they returned from Chennai after attending the marriage.



7.The reason is unacceptable to the Court. The manner in which the application is filed itself would demonstrate that the same is filed casually and callously. In view of the huge delay, the Court is not inclined to accept the contentions of the learned counsel for the petitioners. Even though they were set ex-parte, to the limited extent permissible, they can make their arguments during the argument stage. Keeping open such liberty to the petitioners, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.07.2024

NCC:Yes/No

Ns

To

1.The Principal District Munsif,
Trichirappalli.



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D.BHARATHA CHAKRAVARTHY, J.

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