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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)No.1084 of 2020

1.Ragupathi

2.Poonkodi

...Petitioners

Vs.

1.Kannammal @ Pappathi

2.Chinnakannan

3.P.Raju

4.P.Balaji

5.Kalavathi

6.Reka

... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decreetal order dated 28.08.2020 made in I.A.No.1009 of 2019 in O.S.No.288 of 2012 on the file of the Additional District Munsif Court, Dindigul, dismissing the interlocutory application and allow this revision.

For Petitioners : Mr.P.Arun Jayaram

For R-1 to R-4 : No Appearance

For R-5 & R-6 : Batta due



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ORDER

This Civil Revision Petition is filed by the plaintiffs 3 and 4 to set aside the Fair and Decreetal order dated 28.08.2020 made in I.A.No.1009 of 2019 in O.S.No.288 of 2012 on the file of the Additional District Munsif Court, Dindigul.

2. Notice is not served to the respondents 5 and 6 and registry has noted batta was not paid. However, the Learned Counsel appearing for the revision petitioner submitted that the respondents 5 and 6 are not contesting party and to this effect had filed a memo and the same is recorded. Hence notice to the respondents 5 and 6 are dispensed.

3. The suit in O.S.No.288 of 2012 was filed for partition, but the plaintiffs have not appeared before the Court, the partition suit in O.S.No.288 of 2012 was dismissed for default on 05.06.2017. After lapse of 857 days, the plaintiffs have preferred a petition to set aside the order passed by the Court below. The Court has rendered a finding that the affidavit is unbelievable since the 3rd plaintiff had stated that he was not well but to substantiate his contention no document was produced before the Court. And they have also not filed any documents to substantiate that they are busy in their profession.



4. It is seen one of the co-sharers had sold the property to the 3rd party, based on the sale other co-sharer cannot be made to suffer. Therefore, the rights of the parties ought to ascertain, therefore this Court is inclined to allow the revision petition.

5. However, the delay of 857 days is huge, this Court is inclined to allow the delay on payment of cost of Rs.3,000/- to the respondents. On such payment, the Court below is directed to allow the application and the suit may be taken on file and the same may be disposed within a period of one year from the date of receipt of this order. No Costs.

20.09.2024

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

To

1. The Additional District Munsif Court,
Dindigul.

2. The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
C.R.P(MD)No.1084 of 2020

20.09.2024