



C.R.P(MD)No.987 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2024

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THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.987 of 2020

and

C.M.P(MD)No.6481 of 2020

1.Kaliyamoorthy

2.Indhumathi

3.Veera Prakash

... Petitioners/Petitioners/
Appellants

Vs.

1.Anusiya

2.Veerapandiyan

3.Govindha Velar

... Respondents/Respondents/
Respondents

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order passed by learned Principal District Judge, Pudukottai in I.A.No.17 of 2018 in A.S.SR.No.734 of 2018, dated 05.02.2020.



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For Petitioner : Mr.N.Kamesh

For R1 : M.Gandhirajan

ORDER

This petition came to be filed assailing the order passed by the learned Principal District Judge, Pudukkottai in I.A.No.17 of 2018, dated 05.02.2020.

2. The petitioner herein is the appellant in A.S.SR.No.734 of 2018 on the file of the Principal District Court, Pudukkottai and the defendants in O.S.No.209 of 2011 on the file of Subordinate Court, Pudukkottai.

3. The 1st respondent is the daughter of the 1st appellant herein. O.S.No.209 of 2011 was one for partition filed by the plaintiff, that is, the 1st respondent herein. A preliminary decree was passed on 10.12.2011 and thereafter, a Commissioner came to be appointed by the learned Trial Court in the said suit for the purpose of dividing the property by metes and bounds in accordance with the preliminary decree. Following which, a final decree came to be passed on 03.09.2014. Assailing the same, A.S.SR.No.734 of 2018 came to be filed on the file of Principal District Court, Pudukkottai along with I.A.No.17 of 2018 seeking to condone the



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delay of 1360 days in filing the appeal. However, the learned First Appellate Court proceeded to dismiss the same on 05.02.2020. Assailing the same, this petition came to be filed.

4. The learned counsel for the petitioners submits that the 1st appellant herein who is a senior citizen, was continuously suffering from ill health, as a result of which, he was not able to contact his Advocate in time. Hence, the delay of 1360 days had occurred in preferring an appeal as against the final decree. Considering his old age and his ill-health, the learned First appellate Court ought to have allowed the interlocutory application for condoning the delay of 1360 days and hence, on that basis, he pressed for allowing the revision petition.

5. Per contra, the learned counsel appearing for the respondent submitted that the claim of the 1st appellant that he is a senior citizen is incorrect for the reason that at the time of the application, he was only 60 years old. Hence, he cannot be considered as a senior citizen. That apart, he categorically contended that his claim that he has suffered infirmity due to continuous ill-health was not supported with any material evidence and only on that ground, the First Appellate Court had rightly



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dismissed the petition for condoning the delay of 1360 days in filing the appeal against the final decree.

6. That apart, the learned counsel for the respondent drew my attention to Section 97 of the Code of Civil Procedure, 1908 and submitted that, having not challenged the preliminary decree, now the appellants are precluded from challenging the final decree in terms of the aforesaid provision and hence, the first appeal itself is not maintainable and on that basis he pressed for dismissal of the revision petition.

7. Heard the learned counsel on either side and perused the materials available on record.

8. The learned Trial Court had dismissed the interlocutory application seeking to condone the delay of 1360 days only on the ground that the claim of the petitioner was not supported by appropriate evidence to substantiate his ill-health. That apart, the learned Trial Court further held that the petitioner was not correct in his submission that the final decree came to be passed by the learned Trial Court without giving appropriate opportunity to make his submission / objections on the



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Commissioner's report filed before the learned Trial Court.

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9. The Hon'ble Apex Court has laid down the scope and powers of the First Appellate Court in many cases and have reiterated and reaffirmed the principle that the first appeal is a valuable right of the litigant. The Hon'ble Apex Court has observed in the following judgments:

i) **2001 (3) SCC 179 (Santosh Hazari Vs. Purushottam Tiwari(deceased) by LRs)**

“15.....The first appellate Court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law.....”

ii) **2015 (11) SCC 269 (Shasidhar & Others Vs. Ashwini Uma Mathad & Another)**

“14. In H.K.N. Swami v. Irshad Basith, this Court stated as under:

“ 3. The first appeal has to be decided on facts as well



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as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."

(iii) 2022 (7) SCC 678 (Ramnath Exports Private Limited Vs. Vinitha Mehta & Another)

"9.....The first appeal is a valuable right of the appellant and therein all questions of fact and law are open for consideration by re-appreciating the material and evidence. Therefore, the first appellate court is required to address on all the issues and decide the appeal assigning valid reasons either in support or against by re-appraisal. The court of first appeal must record its findings dealing all the issues, considering oral as well as documentary evidence led by the parties."

10. Considering the fact that the first appeal is the inherent right of the litigant, this Court is of the considered view that the First Appellate Court ought to have condoned the delay by imposing heavy cost. Hence,



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the order passed in I.A.No.734 of 2018 is hereby set aside on condition that the petitioners pays a sum of Rs.15,000/- (Rupees Fifteen Thousand only) to the 1st respondent herein (plaintiff in the suit) within a period of four (4) weeks from the date of receipt of copy of this order. The First Appellate Court is directed to dispose of the appeal as expeditiously as possible, preferably within a period of four (4) months from the date of receipt of copy of this order.

11. With the above said observations, this Civil Revision Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

18.07.2024

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

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To

- 1.The Principal District Court,
Pudukottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI,J.

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Order made in
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