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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Monday, the Twenty Second day of July Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice D.BHARATHA CHAKRAVARTHY

C.M.P.(MD). No.8379 of 2023

in

C.M.P.(MD). No.2029 of 2017

in

C.R.P.(MD)No.Sr6776 of 2015

Ramjan Beevi

... Petitioner/Petitioner/ Petitioner

-Vs-

1 Chandran

2 Kumaravel

3 Sankar(Died)

4 Rakkammal

5 Santhi

6 V.S.Isravel

... Respondents/Respondents/Respondents

Prayer in C.M.P.(MD). No.8379 of 2023 in C.M.P.(MD). No.2029 of 2017 in C.R.P. (MD)No.Sr6776 of 2015 :-

This Miscellaneous Petition filed Under Section 5 of Limitation Act, to condone the delay of 461 days to Restore the petition in CMP (MD) No.2029 of 2017 in CRP (MD) SR No.6776 of 2015 which was dismissed by this Honourable Court dated 11.03.2021 and thus render justice.



Prayer in C.M.P.(MD). No.2029 of 2017 in C.R.P.(MD)No.Sr6776 of 2015 :-

This Miscellaneous Petition filed Under Section 5 of Limitation Act, to condone the delay of 37 days in filing the above said CRP (MD) SR No.6776 of 2015 on the file of this court.

Prayer in C.R.P.(MD)No.Sr6776 of 2015 :-

This Civil Revision Petition filed Under Section 115 of Code of Civil procedure, to set aside the Order and Decree dated 23.09.2014 made in I.A.No. 29 of 2013 in Unnumbered A.S.No. Of 2013 on the file of the Principal District Judge,Ramanathapuram.

ORDER:-

This Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru.G.Gomathi Sankar, Advocate for the Petitioner and of Thiru.S.Ramesh, Advocate for the 1st Respondent and Respondents 2,4, 5 and 6 and not appeared either in person or by an Advocate and 3rd Respondent Died, this Court made the following order,

The suit in O.S.No.4 of 2008 was filed on 04.02.2008. The same is for partition.

The civil revision petitioner herein is the subsequent purchaser and sixth defendant in the suit. A preliminary decree was passed on 12.08.2009 awarding 6 / 25 shares in the suit properties in favour of the plaintiff. Thereafter, a final decree application was filed in I.A.No.194 of 2010 on 16.09.2010. The petitioner herein, who was the sixth defendant was called absent and was set *ex parte* on 29.10.2010 in the said petition. Thereafter, the Advocate Commissioner filed a report and a final decree was passed on 17.04.2012, since the learned Counsel for the petitioner reported 'No instructions'. An execution petition in E.P.No.2 of 2013 was filed on 01.02.2013.

Thereafter, the petitioner herein had filed the present appeal suit along with



I.A.No.29 of 2013 to condone the delay of 1269 days delay in filing the appeal against the preliminary decree. The said I.A.No.29 of 2013 was dismissed on 23.09.2014. Thereafter, in the year 2015, the present Civil Revision Petition was filed along with the delay of 65 days, which was taken on file only in the year 2017 as C.M.P(MD)No.2029 of 2017. Even taking a lenient view, the said C.M.P(MD)No.2029 of 2017 was allowed on payment of cost of Rs.500/- and the matter was posted for compliance on 11.03.2021. On 11.03.2021, it was seen that the cost was not paid and therefore, the said C.M.P(MD)No.2029 of 2017 was dismissed. Thereafter, on 05.07.2023, the present application in C.M.P(MD)No.8379 of 2023 was filed to restore the earlier C.M.P(MD)No.2029 of 2017 with a prayer to condone the delay of 461 days.

2. The learned Counsel for the petitioner vehemently submitted that the suit being one of partition and the petitioner being a subsequent purchaser, at least an opportunity should be given to the petitioner to contest the case on merits.

3. I am unable to accept the arguments of the learned Counsel for the petitioner. The leniency showed on account of the human element present in the Presiding Officers as well as the Judges of this Court, cannot be extended beyond the limit and the above narration of facts itself would demonstrate, how parties take undue advantage of the provisions of condonation of delay, etc and in view, thereof not even detailed reasonings are necessary for holding that the continuation of these



proceedings itself would result in injustice to the respondents, who obtained preliminary decree long ago on 12.08.2009. Therefore, finding no merits, (*)this

C.M.P(MD)No.8379 of 2023 stand dismissed.

(*)Corrected as per the order of this court dated 22.07.2024 made in CMP(MD)No.8379 of 2023 in CRP(MD)No.(SR)6776 of 2015

Sd/-

Assistant Registrar(CS II)

// True Copy //

/10/2024

Sub Assistant Registrar
(CS - I/ II / III /IV)

btr
TO

The Principal District Judge, Ramanathapuram.

+ 1 CC to Mr.G. Gomathi Sankar, Advocate in Sr.No.36618 / 2024.

+ 1 CC to Mr.S.Ramesh, Advocate in Sr.No.36282 / 2024.

Copy to:

The Section Officer,
Judicial Section,

Madurai Bench of Madras High Court, Madurai

ORDER DATED : 22/07/2024

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ORDER

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C.M.P.(MD). No.8379 of 2023
in

C.M.P.(MD). No.2029 of 2017
in

C.R.P.(MD)No.Sr6776 of 2015
Giving direction and etc.
as stated within.

MK/16.10.2024 4P/5C

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