



C.R.P(MD)No.479 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.479 of 2018

1.V.Ajaygos

2.Dhanalakshmi

... Petitioners/Petitioners
Plaintiffs

Vs.

1.Varatharaj Naicker

2.Rajeswari

3.Ramamoorthy

4.Anjappan

5.Janakiraman

6.Boopesh Gubtha

... Respondents/Respondents
Defendants

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.1230 of 2015 in O.S.No.189 of 2011, dated 19.08.2017 by the learned Additional District

1/6



C.R.P(MD)No.479 of 2018

Munsif Court, Srivilliputtur.

WEB COPY

For Petitioners : Mr.Lakshmi Gopinathan
for M/s.Polax Legal Solutions

For R-1, R-4 to
R-6 : No appearance

For R-2 & R-3 : Mr.A.Sivaji

ORDER

The plaintiffs in O.S.No.189 of 2011 on the file of the Additional District Munsif Court, Srivilliputhur are the revision petitioners.

2. Pending suit, the plaintiffs did not appear and the suit was dismissed for default. The plaintiffs had filed I.A.No.1230 of 2015 to condone the delay of 974 days in filing an application under Order IX, Rule 9 of CPC. The said application has been dismissed by the Trial Court on the ground that, the delay has not been properly explained. Challenging the same, the present revision petition has been filed.



C.R.P(MD)No.479 of 2018

3. According to the learned Counsel appearing for the revision petitioners, the suit is one for partition and therefore, unless the suit is restored, they will be put to great hardship.

4. Per contra, the learned Counsel appearing for the respondent herein had contended that the present application has been filed only to drag on the proceedings. Since there are no merits in the suit, he prayed for dismissal of the revision petition and to confirm the order passed by the Trial Court.

5. I have carefully considered the submissions made on either side and perused the materials available on record.

6. No doubt, the delay is a huge delay of 974 days in filing an application under Order IX, Rule 9 of CPC. Considering the fact that the suit is one for partition and the suit was dismissed for default, it would not be a bar for the plaintiffs to file an independent suit as long as the properties continued to be joint family properties. This Court in a



C.R.P(MD)No.479 of 2018

judgment reported in **2009 (1) MLJ 126 [V.Ponramu Vs. B.Usharani and Others]**, has held that the bar under Order IX, Rule 9 of CPC., from filing a fresh suit, when the first suit is dismissed for default, would not apply to partition suits. In view of the above said facts, instead of driving the present plaintiffs to file a fresh suit, it would be appropriate to allow the application to condone the delay and to restore the suit for partition.

7. In view of the above said deliberations, the order passed by the Trial Court in I.A.No.1230 of 2015 is set aside. The delay is condoned and the suit is restored to the file, on payment of cost of Rs.3,000/- on or before **06.06.2024** before the High Court Legal Services Authority.

8. With the above said observation, this Civil Revision Petition stands allowed.

9. Post on **07.06.2024** for reporting compliance.

26.04.2024



C.R.P(MD)No.479 of 2018

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

To

- 1.The Additional District Munsif Court,
Srivilliputtur.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Officer in-charge/Registrar Judicial,
High Court Legal Services Committee,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD)No.479 of 2018

R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)No.479 of 2018

26.04.2024