



C.R.P(MD)No.1804 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24.07.2024

CORAM

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

C.R.P(MD)No.1804 of 2022

1.Murugan
2.Nagaraj
3.Dharmar
4.Rajendran
5.Paulraj

..Respondents 1to3,5&6,
Defendants 1to3, 5&6

Vs.

1.Saroja Ammal
2.Minor Ponnumani

3.Mohan
4.Thangavelu

...Respondents 1&2/
Petitioners/Plaintiffs

..Respondents 3&4/
Respondents 4&7/Defendants 4&7

(R2 represented through her grandmother
R1 as guardian)

Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the civil revision petition and set aside the fair and decreetal order dated 04.07.2022 made in I.A.No.12 of 2021 in O.S.No.79 of 2016 on the file of the District Munsif Court, Paramakudi.



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For Petitioner	:Mr.PT.S.Narendravasan
For R1	:Mr.D.Senthil
For R2	:Minor
For R3&R4	:Dispensed with

ORDER

The Civil Revision Petition is filed aggrieved by the order, dated 04.07.2022 made in I.A.No.12 of 2021 in O.S.No.79 of 2016 on the file of the learned District Munsif Paramakudi.

2.By the said order, the interlocutory application filed by the respondents was allowed. In the said interlocutory application, the respondents prayed to condone the delay of 651 days in filing the restoration petition. They had originally filed the suit in O.S.No.79 of 2016 praying for partition and separate possession of 3/16 shares in respect of the suit schedule properties.

3.The suit is resisted by the defendants by categorically mentioning that as far as the second plaintiff is concerned already the 4th defendant has executed a gift deed as the father and



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guardian of the 2nd plaintiff and unless the same is challenged specifically by the 2nd plaintiff, he cannot claim any right over the property. Even the rights in respect of the first plaintiff is also denied. In that background, the suit came to be dismissed for default on 07.08.2018. Pleading that the first plaintiff being the mother and the 2nd plaintiff being the minor and the first plaintiff suffering from jaundice and thereafter, due to the COVID-19 pandemic, she could not immediately contact her counsel and file the petition, the above application is made to restore the suit with the condonation of delay of 651 days.

4.The said application is resisted by filing a counter affidavit by submitting that belatedly the plaintiffs cannot file to restore the suit, which was filed in the year 2016 and dismissed for default in the year 2018. It is incorrect that the COVID-19 pandemic period immediately followed. No evidence relating to the illness was furnished. The trial Court, considered the overall facts and circumstances of the case and accepted the reasoning of the



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petitioners' illness, allowed the petition on payment of cost of Rs.4,000/-. Aggrieved by which, the present Civil Revision Petition is filed.

5.The learned counsel appearing on behalf of the petitioners by producing the copy of the release deed would contend that after receiving a sum of Rs.5,000/- as consideration, the document has been executed by the 4th defendant also on behalf of the 2nd defendant minor. When the guardian has exercised his right, unless the same is specifically challenged by the minor immediately upon attaining the majority, the minor cannot claim any right of partition. Similarly, even in respect of the other petitioners, when the suit was filed in the year 2016, now if the same is restored and the defendants are made to face the trial, they will be put to prejudice in view of the delay. He would further submit that the reasons mentioned are all false and absolutely not supported with any evidence. He would submit that on the face of it the pleading relating to COVID-19 pandemic is incorrect.



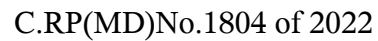
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6.Per Contra, the learned counsel appearing on behalf of the respondent would submit that when the first plaintiff is claiming a share through her deceased husband Ponnusamy, the same has to be decided by the trial Court on merits. As far as the second plaintiff is concerned, now only the petition to declare him as a major has been filed and still there is a time for him to pray for appropriate relief.

7.I have considered the submissions made on either side and perused the material records of the case.

8.Though the contention is made by the learned counsel for the petitioners with reference to the second plaintiff, it cannot be said that the first plaintiff also does not also have any right at all without considering the evidence on record. Therefore, at this stage, when the trial Court, after considering the feeble reasons, have taken a lenient view, allowed the petition by exercising the discretion, I do not find any compelling reasons to upset the said



9. Considering the fact that the suit is of the year 2016 and it was dismissed for default in the year 2018, and the application being filed in the year 2021, the cost is increased from Rs.4,000/- to Rs.10,000/-. The balance sum of Rs.6,000/- shall be paid directly to the respondents or to the learned counsel appearing for the respondents in the High Court or to the counsel appearing before the trial Court, on or before 02.08.2024. On payment of such cost, the Civil Revision Petition shall stand dismissed. If the cost is not paid, the Civil Revision Petition shall stand allowed. No costs.

24.07.2024

NCC:Yes/No
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To

The District Munsif Court,
Paramakudi.



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D.BHARATHA CHAKRAVARTHY, J.

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