



C.R.P(MD)No.1291 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1291 of 2018

Family Manager Thamimul Ansari

... Petitioner/Petitioner/
Plaintiff

Vs.

1.S.P.Khaja Moideen

2.S.M.Mohanmmed Sulaiman

3.Mariyayee

4.Karuppusamy

5.Raman

6.Veerammal

7.Chinnaponnu

8.Kannamma

9.Chinnammal

10.Ponnar

11.Rajalakshmi

12.Lakshmi



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13.Balasubramani

... Respondents/Respondents/
Defendants

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Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside fair and decreetal order, dated 09.11.2017 in I.A.No.1079 of 2017 in O.S.No.253 of 2008 on the file of District Munsif Court, Kulithalai.

For Petitioner : Mr.K.Govindarajan

For R2 : Died

For R3 : Mr.K.Ashok Kumar Ram

For R4-R9 & R11 : Ex parte

For R10,R12 & R13 : No Appearance

ORDER

The plaintiff in O.S.No.253 of 2008 on the file of District Munsif Court, Kulithalai is the revision petitioner.

2. The said suit has been filed in the capacity of family manager for the relief of declaration that the 'A' schedule property belongs to the plaintiff's family absolutely, and for delivery of possession of 'B' schedule property which is part and parcel of the 'A' schedule property.



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When the suit was posted for trial, due to the non-appearance of the plaintiff, it was dismissed for default on 05.01.2012. The present application in I.A.No.1079 of 2017 was filed on 30.08.2016 to condone the delay of 1490 days in filing an application to restore the suit.

3. A perusal of the affidavit in support of I.A.No.1079 of 2017 reveals that due to the fact that the family manager was affected from Jaundice, he could not pursue the suit and therefore, it came to be dismissed for default. Apart from the said reason, no other reason has been assigned. At the time of hearing of the interim application, the petitioner has examined himself as P.W.1 and his brother as P.W.2 and one of the residents of the said village as P.W.3. It could be seen from the deposition of P.W.2 who is the brother of the family manager that the suit has been filed on behalf of the entire family. Though the family manager alone was affected with jaundice, no other member of the family have taken any interest in contacting the counsel or in following up the suit with their counsel. That apart, the reason assigned for filing an application for the delay in restoring the said suit is not believable. The case of the plaintiff is that he was affected with Jaudice and hence, he could not contact his counsel for 4 years is not believable. Therefore, the



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trial Court was right in dismissing the application to condone the delay in filing a restoration application. There are no merits in the revision petition.

4. Hence, this Civil Revision Petition stands dismissed. No costs.

05.04.2024

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

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To

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



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R.VIJAYAKUMAR,J.

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Order made in
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