



C.R.P(MD)No.2191 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2191 of 2019
and
C.M.P(MD)No.11423 of 2019

1.Kamalam

2.Saraswathi

3.Shanmugavadivoo

4.Maragatham

... Petitioners/Petitioners
Appellants

Vs.

1.Gnanapoongothai

2.Sankaranarayanan

... Respondents/Respondents
Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of CPC., to set aside the fair and decreetal order passed in I.A.No.73 of 2016 in Unregistered A.S.No. of 2019 on the file of the Principal Sub Court, Tenkasi, dated 06.08.2019 by allowing this Civil Revision Petition.



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For Petitioners : Mr.T.Selvan

For Respondents : Mr.D.Srinivasa Raghavan

ORDER

The present revision petition has been filed challenging an order, wherein the Principal Sub Court, Tenkasi has dismissed an application in I.A.No.73 of 2016, which was filed to condone the delay of 262 days in filing a first appeal as against the final decree passed in I.A.No.337 of 2004 in O.S.No.121 of 2004 on 02.07.2015.

2. The revision petitioners herein are the legal heirs of the first defendant. A preliminary decree has been passed in O.S.No.85 of 1981 [re-numbered as O.S.No.121 of 2004] on 09.01.1984. Challenging the same, the defendants in the suit had filed A.S.No.590 of 1984 before this Court and the said appeal was dismissed on 21.12.2001.



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3. Pursuant to the confirmation of the preliminary decree, the decree holder had filed I.A.No.337 of 2004 for passing of final decree. After contest, a final decree came to be passed on 02.07.2015. Challenging the final decree proceedings, the revision petitioners have filed a first appeal before the Principal Sub Court, Tenkasi along with I.A.No.73 of 2016 to condone the delay of 262 days in filing the first appeal. The said application was dismissed by the First Appellate Court on the ground that, all the allottees have already taken delivery of the property and therefore, nothing survives to be adjudicated in the first appeal. Challenging the same, the present revision petition has been filed.

4. According to the learned Counsel appearing for the revision petitioners, he had properly explained the delay in filing the first appeal. That apart, the share of the first defendant is not disputed. He further contended that the first defendant has already paid the Court fees for declaration of his share. The final decree Court has not allotted the properties in favour of the first defendant or his legal heirs. Instead some



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of the properties have been allotted to the other sharers and other properties have been retained as un-allotted portion. He has got grievance over the allotment of the properties in favour of other sharers also. In such an event, the Court ought to have entertained the first appeal.

5. Per contra, the learned Counsel appearing for the respondents herein, on instructions, submitted that neither the first defendant nor his legal heirs have paid Court fee for declaration of their shares. Therefore, no property was allotted in favour of the first defendant in the final decree proceedings. However, for those sharers, who have already paid Court fee, allotments have already been made and they have also taken delivery of their respective shares. In such an event, if first appeal is taken on file, that would disturb the allotments made in their favour. Hence, he sought for dismissal of the revision petition.

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



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7. It is not in dispute that the first defendant is entitled to a share in the suit schedule properties. However, it is not clear whether the first defendant or his legal heirs have paid Court fee for declaration of their share or not. The legal heirs of the first defendant have explained the delay of 262 days. They have also expressed some grievance over the allotment of properties in favour of other sharers. Merely because, the other sharers have already taken delivery of the property, the condone delay application cannot be dismissed. Whether the allotments already made in the final decree proceedings are correct or not have to be re-adjudicated by the First Appellate Court. However, the delivery taken by other sharers shall not be disturbed, until the same is finally decided by the First Appellate Court or by any other Higher Forum. The order passed by the Principal Sub Court, Tenkasi in O.S.No.73 of 2016 on 06.08.2019 is hereby set aside. The delay is condoned. The learned Subordinate Judge, Tenkasi is directed to number the appeal and dispose of the same on or before **31.10.2024**, after giving due opportunity to both the parties.



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8. With the above said observation, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

18.04.2024

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

To

- 1.The Principal Sub Court,
Tenkasi.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
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