



C.R.P.(MD)No.2388 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.2388 of 2024

1. Virumayee @ Poornam
2. Nagammal
- 3.Manjanapetchi
4. Samuthiram

... Petitioners

VS

- 1.M.Mani
- 2.Pandiammal
- 3.G.Pandi
4. G.Veluchamy

.....Respondents

PRAYER : Civil Revision Petition is filed under 227 of the Constitution of India, to allow this Revision and setting aside the order and directing the Trial Court to number the interlocutory application in I.A.No. Unnumbered / 2023 in O.S. No 176 of 2017.



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For Petitioners : Mr.R.Ramasamy

For Respondents : Mr.R.G.Sankar Ganesh

ORDER

This Civil Revision Petition is filed by plaintiffs against the return of unnumbered interlocutory applications. The prayer in the said unnumbered petition is to condone the delay of 1186 days in preferring the restoration application and another application is to restore the suit.

2. In the return it is stated that the transpose petition filed against the P1 is dismissed in the suit, hence it is directed to state how the present petition is maintainable. Without explanation and without resubmitting the same, the revision petitioner had filed the present petition.

3. The suit was filed for partition claiming $1/3^{\text{rd}}$ share in 1 to 3 items of suit properties and allot $2/3^{\text{rd}}$ share in the suit items 4 to 17 with a separate possession and to pay mesne profits. The revision petitioners 1 to 4 are daughters,



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the 1st respondent is the only son and 2nd respondent is the daughter of Muthuvirumathevar and Kamatchiammal. In shorth they have five daughters and one son. Since the 2nd respondent did not cooperate she is being shown as 2nd defendant in the suit. There are 6 children, then partition should be 1/6th, but the prayer is to grant 1/3rd share.

4. The 1st plaintiff had filed the suit seeking partition along with other sisters except the 2nd defendant. Pending suit the 1st plaintiff had changed her stand and was not interested in contesting the suit. Therefore, the plaintiffs 2 to 4 / revision petitioners 2 to 4 had filed a petition to transpose themselves in the position of the 1st plaintiff and contest the suit. The said petition was dismissed. Therefore, the Trial Court had directed to explain how the restoration was maintainable.

5. It is an admitted fact between the parties that their father died in and around 1969-1970 and the mother died on 01.01.2006. At the time of death



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of the father, the 1st respondent was minor. Therefore, after the demise of their father, the patta stands in the father was transferred into the name of their mother. After attaining majority the son had inherited the property.

6. After hearing the rival submissions, this Court is of the considered opinion that the transpose petition itself is unnecessary. The other plaintiffs have right to continue the litigation. In order to protect their interests all the plaintiffs ought have to examined themselves individually. Without doing so, the transpose petition was filed and the same was dismissed. Thereafter the suit was left default. Then the plaintiffs had filed a petition to condone the delay of 1186 days in filing a petition to set aside the order, dated 12.12.2019. There was huge delay and the same was not explained and no proper reason was adduced.

7. Generally in the suit of partition, this Court would be liberal in considering the delay. But in the present case this Court is not inclined to consider the delay, since there is no merit in the suit for partition.



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8. The facts indicate that the father died in the year 1969, thereafter the properties were changed in the name of the mother, for the reason that at the time of death of father the 1st defendant was minor. After the demise of mother in the year 2006, the patta was transferred in the name of the 1st defendant.

9. Since the mother died in the year 2006, the plaintiffs are under the impression that the properties are available for partition by including the daughters based on the Amendment Act, 2005 wherein the daughters were including as coparceners. The claim of the plaintiffs cannot be considered since the intestate succession would start after the demise of the father in the year 1969-1970. But during the period the plaintiffs being daughters are not entitled to partition as coparceners. Also the plaintiffs had not filed any suit claiming partition all these years and had filed the suit only in the year 2006. Therefore, the plaintiff is not having any rights to claim partition. Since there is no merit in the case, this Court is not inclined to entertain the revision petition.



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10. Accordingly, this Civil Revision Petition stands dismissed. No

Costs.

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

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To

- 1.The Sub Court, Tirumangalam,
Madurai District.
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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