



C.RP(MD)No.260 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:23.07.2024

CORAM

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

**C.R.P(MD)No.260 of 2022
and
C.M.P(MD)No.1201 of 2022**

Josepha(Died)
1.Siluvaikani
2.Kalagnana Mary
3.Gnanam
4.Lourdhu
5.Gnanamuthu
6.Roaj

..Petitioners/Petitioners/
Legal Heirs of Defendant

Vs.

Ramasamy Nadar

..Respondent/Respondent/
Petitioner

Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 17.08.2021 passed by the learned Principal Sub-Court, Tenkasi passed in I.A.No.1 of 2020 in Unnumbered A.S.No.... of 2021.



C.RP(MD)No.260 of 2022

For Petitioner :Mr.S.Sivakumar
For Respondent :Mr.G.Sridharan

ORDER

The Civil Revision petition is filed against the order dated 17.08.2021 passed by the learned Principal Sub-Court, Tenkasi, passed in IA.No.1 of 2020 in unnumbered A.S.No.....of 2021.

2.By the said interlocutory application, the petitioner herein has prayed to condone the delay of 1989 days in filing the appeal suit. A Perusal of the material records of the case would reveal that the suit was filed by the respondent/plaintiff for declaration and injunction. It is the claim of the plaintiff that originally the plaintiff's grandfather was the owner of the property. Thereafter he and his son had partitioned the same and after partition, it had ultimately come to the share of the plaintiff. The defendants are trying to interfere with the suit property. The claim of the defendants is that another Seenivaidiyalinga Nadar was the owner of the property and he has got a sale deed from the said owner and is in possession and enjoyment. The further claim of the



C.RP(MD)No.260 of 2022

WEB COPY

defendants is that the suit schedule does not describe any existent property and a separate schedule of property was given in the written statement.

3.The trial Court, analyzed the respective title of the plaintiff as well as the defendants in detail, came to a conclusion that the plaintiff has proved the title by establishing that there was an oral partition and inheritance and after considering the patta, which is granted in respect of both parties, came to a conclusion that patta will not confer title and on the basis of the title document held in favor of the plaintiff and rejected the case of the defendants and decree was passed on 20.10.2017. Immediately thereafter, the original defendant, viz., Joseph, the father of the petitioner herein, did not file any appeal. He died three years after the decree was passed, that is, on 20.11.2017. It is the case of the petitioner that thereafter when the plaintiff tried to interfere and trespass into the property, there was a police complaint given and only in the police station, they realized that there was a Court decree against them.



C.RP(MD)No.260 of 2022

WEB COPY

Immediately they had contacted the counsel and filed an application for the certified copy of the judgment and decree on 01.08.2018 and after obtaining the copies, the present applications were filed.

4.Mr. Sivakumar, learned counsel appearing on behalf of the petitioner would submit that it can be seen that originally the petitioner's father Joseph was only taking care of the legal proceedings, only because he died after the decree was pronounced, the appeal could not be immediately filed. Once the legal heirs came to know about the proceedings, immediately they applied for the copy and the proceedings were filed. Therefore, he would further submit that there are eight other additional documents which are now in the custody of the petitioner herein, upon the production of which would clearly prove the boundary dispute in favour of the defendants and therefore, they should be given one opportunity to contest the judgment and decree of the trial Court on merits.



C.RP(MD)No.260 of 2022

WEB COPY

5.Per Contra, the learned counsel appearing on behalf of the respondent would submit that the decree was passed in the year 2014 and immediately thereafter, no appeal is filed. Not even a copy application is filed to get the certified copy of the judgment and decree and therefore, when the appeal is filed only in December 2019 and re-presented on in the first week of 2020, no indulgence need be shown to the petitioners.

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

7.It can be seen that the trial Court has considered the case of the parties in detail and has gone into the boundary dispute as raised by the defendants in detail and ultimately concluded in favour of the plaintiff. When the judgment and decree was passed on 13.08.2014, the original defendant that is the father of the petitioner viz., Joseph, passed away only in the year 2017, after three years. He did not choose even to apply for a copy of the



C.RP(MD)No.260 of 2022

WEB COPY

decree and judgment or to file an appeal against the judgment and decree. Even assuming for a moment that the petitioners being the legal heirs did not know about the proceedings or the litigation, it is their own case that in the year 2018 after the death of their father, when the petitioners entered into the property and the matter went up to the police station, they came to know of the suit, when they immediately applied for the certified copy application on 01.08.2018 and when the copy was delivered on 16.08.2018, nothing prevented them from immediately filing the appeal suit. Even thereafter, it can be seen that only in the month of December 2019, that is with a delay of about 16 months, the appeal suit is filed. Therefore, when the delay is humongous, that is 1989 days, at this point of time, I am unable to come to the rescue of the petitioners, especially, when the trial Court has considered the affidavit filed in support of the application for condonation of delay and the counter affidavit filed by the respondent and has rendered its finding and dismissed the application.



C.RP(MD)No.260 of 2022

WEB COPY

8.In the result, this Civil Revision Petition shall stand dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

23.07.2024

NCC:Yes/No

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To

The Principal Sub-Court,
Tenkasi.



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C.RP(MD)No.260 of 2022

D.BHARATHA CHAKRAVARTHY, J.

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