



C.R.P. (MD) No. 629 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 629 of 2024

and

C.M.P. (MD) No.3105 of 2024

1.Rajinikanth

2.Revathi

... Petitioners/

Defendants 10 & 11

-VS-

Revathi

... Respondent/
Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the Fair order and Decreetal order dated 24.02.2023 passed in I.A.No.2 of 2022 in O.S.No.330 of 2013 on the file of the Additional Subordinate Judge, Dindigul and thereby allow the Civil Revision Petition.

For Petitioners : Mr.M.R.Sreenivasan

For Respondent : No appearance



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ORDER

This Civil Revision Petition is directed against the fair and decreetal order of the learned Additional Subordinate Judge, Dindigul, dated 24.02.2023 in I.A.No.2 of 2022 in O.S.No.330 of 2013.

2. On a perusal of the typed set of papers, it can be seen that the above is a suit for partition. The suit for partition was filed by one of the sister as against the other brothers and sisters for partitioning and separate possession of the property, which is said to have belong to the parents of the plaintiff. Apart from the plaintiff, there were eight other sharers. Since the suit was not contested, it was decreed by way of an *exparte* decree on 21.08.2014. As far as the petitioners before this Court are concerned, they are the defendants 10 and 11. They have purchased the part of the suit property based on the earlier registered partition deed.

3. Mr.M.R.Sreenivasan, learned Counsel appearing on behalf of the petitioner would submit that on the basis of the registered partition deed, the defendants 10 and 11 purchased the suit property. After a lapse of eleven years



from the date of registered partition deed, the suit is filed. The suit is hopelessly barred by limitation. The plaintiff has couched the relief cleverly by attacking the sale-deed and invoking the limitation. When the suit was originally conducted, the plaintiffs have engaged an Advocate. However, the plaintiff came for negotiation with the defendants 10 and 11 and informed them that she has filed the suit only to get some amount from the brothers and sisters and will not go to the extent of prosecuting the suit and getting the sale-deed declared as 'Null and Void'. Believing the same, the petitioners did not further instruct the counsel and did not conduct the suit and therefore, the *exparte* decree was passed. The learned Counsel for the petitioners would submit that thus if the brothers and sisters are collusively now practising fraud on the subsequent vendors, this Court should give an opportunity to the petitioners to contest the suit. Only because of the negotiation between the parties, earlier, the suit was not conducted. Therefore, one more opportunity should be given to the defendants 10 and 11. The defendants 10 and 11 are ready to mete out any such terms as may be imposed on them by way of costs or otherwise by this Court. The learned Counsel pleads that this Court can also impose such other terms for expeditious conduct of the suit once again.



4. I have considered the said submissions made by the learned Counsel for the petitioners. In this case, the delay is humongous, i.e., 2646 days.

Therefore, the Court has to see whether the petitioners have explained the delay even to take a liberal view and condone such a delay. Upon perusing the affidavit filed in support of this application, the reason mentioned and as argued by the learned Counsel is that in view of the subsequent dialogue between the parties and that the plaintiff promised the defendants 10 and 11 that she will not proceed further with the suit and take action. Since the petitioners are residing at Karur away from the suit property, the petitioners did not prosecute the suit and instruct their counsel. To that extent, even this Court can take the averments on face value and condone their first action of not prosecuting the suit. However, it can be seen that the final decree application was filed and a notice is served on the petitioners in the year 2019. Even thereafter, they keep quite until the final decree proceedings culminated and surveyors visited the property in the process of dividing the properties by way of metes and bounds and only at that stage in the year 2022, the interlocutory application in I.A.No.2 of 2022 is filed. That period of delay cannot be excused and that shows that the petitioners did not care to prosecute the proceedings and even after the knowledge that the plaintiff is proceeding further with the suit, they did not immediately file the application to set aside the *exparte* decree. In



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view thereof, there is absolutely no explanation for the delay of the period of three years from the year 2019 to 2022 and therefore, in this case, it would be injustice to the plaintiff to set aside the *exparte* decree which was granted in the year 2014, now in the year 2024 and accordingly, this Court cannot come to the aid of the petitioners. Needless to mention that if their vendors have acted in error or in collusion with the plaintiff and not defended the suit, the petitioners can very well seek other remedies to claim damages from the vendors and if they want to file any such suit or proceedings for such relief, the Court will appropriately take into consideration the period of pendency of the application including the period of pendency of the Civil Revision Petition.

5. With the above observations, this Court finds no merits and the Civil Revision Petition is disposed of by confirming the order of the learned Additional Subordinate Judge, Dindigul, dated 24.02.2023 in I.A.No.2 of 2022 in O.S.No.330 of 2013. Consequently, the connected Miscellaneous Petition is closed. No costs.

01.07.2024

Index : Yes
NCC : No

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D.BHARATHA CHAKRAVARTHY, J.

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To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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