



C.R.P(MD)No.11 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.12.2024
DELIVERED ON : 18.12.2024

CORAM:

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.11 of 2024
and
C.M.P(MD)No.77 of 2024

1.Karuthamani @ Karupayee

2.Marimuthu

... Petitioners

Vs.

1.Akkammal

2.Valli

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call the records and set aside the fair and decreetal order, dated 17.03.2023 in I.A.No.1 of 2022 in unnumbered A.S.CFR.No. 752 of 2021 on the file of the Principal Sub Court, Dindigul on the file of the Principal Sub Court, Dindigul.

For Petitioners : Mr.H.Lakshmi Shankar

For Respondents : Mr.A.Arul Jenifer



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ORDER

The present Civil Revision Petition is preferred against the order passed in I.A.No.1 of 2022 in unnumbered A.S.CFR.No.752 of 2021, dated 17.03.2023.

2. The petitioners are the defendants in the suit in O.S.No.727 of 2011 on the file of the Principal District Munsif Court, Dindigul. According to the revision petitioners, the respondent as plaintiff filed the above suit in O.S.No.727 of 2011 for partition claiming 1/4th share in the suit properties and to declare the settlement deed, dated 08.02.2007 as null and void and also to declare the release deed, dated 24.06.2011 as null and void. It is further submitted that due to financial incapacity, the petitioners approached the Free Legal Aid Counsel; that the vakalath for the revision petitioners were filed and written statement was also filed. After some time, the revision petitioners came to know that the suit was decreed in favour of the respondent / plaintiff. On verification, it was found that the Legal Aid Counsel failed to attend the Court for few years and thereafter, the revision petitioners appointed another Counsel and obtained the certified copy of

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judgment and decree and due to the ill health of the first petitioner, she could not follow the new Counsel. Again the petitioners came to know that the present Counsel also failed to follow the suit. Hence, they appointed another Counsel, who informed the revision petitioners about the delay of 1812 days in preferring the appeal against the decree passed by the Trial Court. The petitioners came to know that a preliminary decree was passed in favour of the plaintiff only in respect of the second schedule.

3. It is further submitted that the second item of suit property was jointly purchased by the father and mother of the revision petitioners on 23.06.1989 through a registered sale deed. After the demise of their father in the year 1993, the mother of the revision petitioners executed a registered settlement deed in favour of the third defendant on 08.02.2007 which was attested by his two sisters. On 24.06.2011, the two sisters of the third defendant gave an undertaking deed confirming the family arrangement and the receipt of Rs.1,58,000/- by them. While so, the respondent / plaintiff mentioned in the suit that she is having 1/4th share in the said property. As per law, the plaintiff is having only 1/8th share and not 1/4th share since the mother of the petitioners and the respondent jointly purchased the property.



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The remaining half share should be equally divided between the legal heirs of Palaniappan Asar. Hence, the plaintiff is eligible only for 1/8th share. Therefore, even in the absence of the revision petitioners, the Trial Court ought not to have granted 1/4th share in the second item of the suit properties. Moreover, the release deed executed by the sisters of the revision petitioner was not filed along with the plaint. Therefore, without declaring the release deed as null and void, no share could be granted to the plaintiff. Hence, the revision petitioners were constrained to file an appeal against the decree passed by the Trial Court. Since there was a delay of 1812 days in filing the appeal, the same was filed along with condone delay petition. However, the condone delay petition was dismissed by the First Appellate Court. Aggrieved by this, the revision petitioners filed the present revision.

4. On the other hand, the learned Counsel appearing for the respondent / plaintiff would submit that in the suit filed by the respondent / plaintiff, the revision petitioners were arrayed as defendants 1 to 3 and they appeared through one Counsel, Tmt.Marycinnarani and after completion of trial, preliminary decree was passed on 28.04.2016. The revision petitioners were well aware of the passing of preliminary decree in the above suit and



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after sometime, changed their Counsel and filed an application in D.R.P.No. 20 of 2020 for return of Exhibit B.1 and the said document was returned on 17.12.2020 by virtue of the order passed by the Trial Court. Even in the support affidavit of the said application, the petitioners have mentioned about the disposal of the suit. While so, the petitioners suppressing the above facts, filed the appeal before the Principal District Court, Dindigul.

5. The further contention of the learned Counsel for the respondent is that the petitioners have applied for the certified copy of the decree passed in O.S.No.727 of 2011 on 12.03.2021 and obtained the same on 05.04.2021 through their Advocate. It is further submitted that in pursuance of the decree passed in O.S.No.727 of 2011, the revision petitioners preferred a complaint before the Vadamadurai, Police Station against the respondents and the said complaint was not considered by the police officials and so, the revision petitioners did not proceed further with the said complaint. Thereafter, the respondents preferred the final decree petition in I.A.No.15 of 2020 in which the revision petitioners appeared and failed to file their counter and therefore, the said application is still pending. At this juncture, the revision petitioners preferred the said application for condoning the



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delay of 1812 days for filing the appeal suit. The First Appellate Court considering the above facts, rightly dismissed the said application which calls for no interference by this Court.

6. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent and perused the materials available on record.

7. The undisputed facts are as follows:

1) The respondent / plaintiff filed the above suit in O.S.No.727 of 2011 for partition claiming 1/4th share in this suit property.

2) The revision petitioners / defendants appeared through a Legal Aid Counsel and filed their written statement.

3) The Trial Court passed a preliminary decree in respect of the second schedule of the suit property allotting 1/4th share to the plaintiff and dismissed the claim made by the plaintiff in respect of other properties.

4) The respondent / plaintiff filed an application in I.A.No.15 of 2020 for passing of final decree which is still pending.



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8. At this juncture, the petitioners took out an application in I.A.No.1 of 2021 to condone the delay of 1812 days in filing the appeal suit by stating that the third petitioner failed to subject himself for cross examination since he was not properly guided by his erstwhile Legal Aid Counsel; that the third revision petitioner was suffering from ailment, he was unable to contact his new Counsel to prefer the appeal in time. Per contra, the respondent Counsel submitted that the petitioners are well aware of passing of the preliminary decree and pendency of the final decree petition; that the petitioners have filed an application for return of Exhibit B.1 in D.R.P.No.20 of 2020 in which the passing of preliminary decree was mentioned. The third petitioner has examined himself as R.W.1 before the Trial Court in the condone delay petition. He has categorically admitted about the knowledge of passing of the preliminary decree in the above suit and also about filing of the final decree petition by the respondent / plaintiff. Now it has to be considered whether there is any sufficient cause shown by the petitioner for condoning the delay.



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9. It is settled legal position that unless sufficient cause is shown for condoning the delay, the Courts have no jurisdiction to condone the delay. In the present case, there is hardly any credit upon the petitioners to condone the delay. The petitioners are urging illness of the third petitioner as only ground for condoning the delay in filing the appeal, for which no material evidences were produced by the revision petitioners. The petitioners failed to prove that they were prevented from filing the appeal in time due to the illness of the third petitioner. When there is no satisfactory proof, the delay cannot be condoned. In fact the third petitioner has categorically admitted during his examination that he was aware of the passing of preliminary decree in the above suit. Moreover, even in the support affidavit filed along with the petition for return of the document, the passing of the preliminary decree in the suit was mentioned. While so, there is a gross negligence on the part of the revision petitioner in not filing the appeal in time and the explanation offered in support of the prayer for condonation does not appear to be true. This is evident from the fact that no effective steps were taken to file the appeal in time even immediately after passing of the preliminary decree in the above suit.



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10. Coming to the submission made by the learned Counsel for the revision petitioner that the plaintiff is having only 1/8th share in the second item of the suit property, whereas the Trial Court without considering the materials on record, passed a decree allotting 1/4th share to the plaintiff. Further without declaring the release deed as null and void, partition cannot be granted. Therefore, the revision petitioner has fair case to succeed in the appeal suit. In this regard, I would like to rely upon the judgment of the Hon'ble Supreme Court in the case of ***Pathapati Subba Reddy (Died) by LRs and Others Vs. The Special Deputy Collector (LA)*** [MANU/SC/0285/2024], wherein the Court, after referring to various rulings on law of limitation, has held in paragraph 26 as under :

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;



(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

(emphasis supplied)



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Thus what has been said by the Hon'ble Supreme Court is that merits of the case are not required to be considered in condoning the delay. Therefore, the said arguments put-forth by the learned Counsel for the revision petitioner cannot be fit into in an application filed to condone the delay in filing the appeal in time.

11. In the present case, the application and also the affidavit filed by the petitioner before the First Appellate Court failed to show that there was sufficient cause in not filing the appeal in time. In fact the reasons assigned to condone the delay does not show any cause, much less sufficient cause, to condone the delay.

12. Taking totality of the circumstances, in my view, the First Appellate Court has rightly dismissed the said application which calls for no interference by this Court. Therefore, the order under revision does neither suffer from any fundamental infirmity nor any jurisdictional error which warrants interference of the Court under Article 227 of the Constitution of India.



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13. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

18.12.2024

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

The Principal Sub Court,
Dindigul.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
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