



C.R.P.(MD)No.2490 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.2490 of 2024

and

C.M.P.(MD)No.14229 of 2024

T.Sekar

... Petitioner

Vs.

1.Selvan
2.Abraham David
3.Sundar
4.Sekar

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the order, dated 15.09.2023, passed in I.A.No.122 of 2022 in unregistered A.S., on the file of the Subordinate Court, Tiruchendur.

For Petitioner : Mr.I.Robert Chandra Kumar

ORDER

The present civil revision petition is filed against the order, dated 15.09.2023, passed in I.A.No.122 of 2022 in unregistered A.S., on the file of the Subordinate Court, Tiruchendur.



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2. The suit in O.S.No.148 of 2011 was filed by respondents 1 and 2 herein namely Selvan and Abraham David for partition. The defendants are Sundar, Sekar and T.Sekar. The suit was allowed and the preliminary decree for 2/4 share was granted, but the prayer of permanent injunction was dismissed.

3. The revision petitioner was the 3rd defendant in the suit. Since the suit was allowed, aggrieved over the same the 3rd defendant had preferred an appeal in an un-numbered Appeal Suit with condone delay application to condone the delay of 3146 days. The said application was dismissed. Aggrieved over the same the present revision petition is filed.

4. The delay is more than eight years. In the meanwhile, interlocutory application in I.A.No.263 of 2018 was filed for passing final decree by the 4th defendant namely M.Sekar. The contention of the revision petitioner is that he is not aware of the final decree proceedings but the contention of the plaintiffs is that the revision petitioner is aware of the proceedings. The Court below had considered the said plea of the revision petitioner and held that the revision



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petitioner is not aware of the final decree proceedings. At the same time the Court below held that the revision petitioner had not explained the delay of four years thereafter and therefore had held that the delay cannot be condoned. It is seen that the reason stated by the revision petitioner is that his counsel died and hence he could not file the appeal in time. It is seen that the suit was decreed on 24.09.2013, the counsel died on 25.03.2021. The revision petitioner had not explained the delay from 2013 to 2021, which is nearly 8 years. This Court is of the considered opinion that the delay is huge and the same is not properly explained.

5. The revision petitioner further submitted that from 1995 onwards he is in possession of the suit properties i.e. for more than 29 years. Further submitted that he is having lease hold rights for the suit properties and also submitted that the respondents 3 and 4 namely M.Sundar and M.Sekar had agreed to sell their share in the respect of the 1st schedule of property for a sum of Rs.1,80,000/- and the revision petitioner had paid advance of Rs.40,000/- on 19.12.2002. Apart from the



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same they received Rs.1,00,000/- in the year 2011. Without considering the same the Trial Court had passed the judgment, hence he had preferred Appeal Suit.

6. This Court is of the considered opinion that since the revision petitioner is not claiming ownership rights but only lease hold rights. The suit is filed for partition and the two plaintiffs namely Selvan and Abraham David and the defendants 1 and 2 namely M.Sundar and M.Sekar are entitled to share in the properties. Therefore, this Court is of the considered opinion that the appeal itself is futile exercise. Moreover, it may affect the rights of the above stated parties.

7. The revision petitioner submitted that there is an agreement to sell the property and an advance of Rs.40,000/- is paid on 19.12.2002. If it is so, then the revision petitioner's remedy is to file specific performance suit. But as on date the claim is barred by limitation. Further the revision petitioner claims he had paid further money of Rs.1,00,000/- in the year 2011. On perusal of the judgment in O.S.No.140 of 2011 it is seen that the revision petitioner has not filed any document to prove that the said amount is paid. Even if it is paid, then the revision



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petitioner ought to file a separate suit to prove the same and he cannot use the appeal as a tool to thwart the rights of the said plaintiffs and two defendants who are beneficiaries of the partition suit. Therefore, this Court is of the considered opinion that the claim of the revision petitioner cannot be entertained. However, the revision petitioner is at liberty to file a separate suit and prove the aforesaid payments through documents evidence, if so advised.

8. With the above said observations, the civil revision petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

16.10.2024

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

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To

- 1.Subordinate Court, Tiruchendur.
- 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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