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C.R.P.(PD).No. 1037 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.03.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No. 1037 of 2025

&

C.M.P.No. 5996 of 2025

Dhanalakshmi (Died)

1.Thilagavathy

2.Kamalam

3.Pongodi

4.Santhoshmani

5.Sakthivel

...Petitioners

Vs.

1.Kolandhasamy

2.Sulochana



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3.Rekha

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4.Minor Pavadharani

...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 07.06.2024 in unnumbered IA in CFR.No.1616 / 1 in OS.No.370 of 2010 on the file of the District Munsif, Perundurai at Erode District.

For Petitioner : Mr. N S Amogh Simha

ORDER

Challenging the rejection of an application filed under Section 5 of the Limitation Act to condone the delay of 418 days in filing the petition to set aside the ex parte decree dated 20.04.2022 the defendants 1 to 5 and 8 are before this Court. This order has been passed by the District Munsif, Perundurai, Erode in unnumbered IA in CFR.No.1616/1 in OS.No.370 of 2010.



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2. The petitioners in the unnumbered IA are the defendants 1 to 5 and 8 in the suit for a partition filed by the 1st respondent herein. It appears that the petitioners had appeared through counsel and had also filed their written statement. However, since they had not cross examine PW1 they had been set ex parte. Ultimately, the suit was decreed by order dated 20.04.2022 with none of the defendants participating in the arguments. Even the Court Guardian who had been appointed on behalf of the 10 defendant has also not filed a written statement for the minor.

3. The petitioners would submit that it was the 1st defendant who was taking care of the case as defendants 2 and 5 are her daughters and she has been looking after the case on behalf of the other petitioners as well. In the month of April 2020 she had been affected with stroke as a result her right hand and left leg had become paralysed and she was bed ridden.



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4. The other petitioners namely petitioners 2 to 5 were taking care of her and therefore they could not contact their counsel to give instructions to conduct the case. It is only in the month of February 2023 when summons in EP.No.2 of 2023 was received by them they had come to know about the same. Immediately they have come forward with the application. However, in the interregnum there has been a delay of 418 days.

5. The learned Trial Judge without numbering the said application had been returning the matter and ultimately posted the same for maintainability on 25.11.2024 and the learned Judge proceeded to dismiss the application by stating that the suit was contested by the 10th defendant whereas the other defendants had remained ex parte. Thereafter, a decree was passed on 20.04.2022. Therefore it cannot be construed as an ex parte decree.



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6. Challenging the same, the petitioners are before this Court.

7. Heard the learned counsel for the petitioner.

8. At the outset the petition has been rejected without even numbering the application and without even taking into consideration the facts of the case. The learned Trial Judge has overlooked the fact that the 10th defendant is a minor and he is represented by the Court Guardian. The other defendants have not filed their written statement / completed cross examination etc., Therefore, in all senses the decree is an ex parte decree.

9. The learned Trial Judge who was considering the application on the administrative side has transgressed into judicial side to reject the application on the ground of maintainability. It has been time and again stated that while numbering a suit or an application the parameters that had to be taken into consideration is different from the parameters that has to be taken into consideration while passing orders



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on the judicial side.

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10. In the instant case not only is the reasoning of the learned Judge for rejecting interlocutory application erroneous but he has also presumed that the decree is one passed after a full fledged Trial. The order therefore suffers from vice of arbitrariness and has to be set aside. Accordingly, the impugned order set aside. The learned Trial Judge is directed to number the IA.

11. The Civil Revision Petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No

Internet : Yes/No

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To

The District Munsif,
Perundurai,
Erode District.



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