



C.R.P.(NPD)(MD)No.1383 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)No.1383 of 2023

and

C.M.P(MD)No.6860 of 2023

Annakili (Died)

...Nil/1st Petitioner/1st Appellant

Anandamohan,

Represented through his wife and Power Agent,

Nirmala.

...Petitioner/Petitioner/2nd Appellant

Vs.

1.Amutha

2.Muthulingaselvi

3.Adhikesavan

*(Notice to R2 is dispense with as R2 was set
exparte before the trial Court, vide Court order
dated 22.01.2025 made in CRP(MD)No.1383 of 2023)*

...Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order, dated 20.03.2023 made in I.A.No.1 of 2019 in A.S.No.45 of 2011 on the file of Sub Court, Valliyoor.



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For Petitioners : Mr.V.George Raja

For Respondents : Mr.H.Arumugam for R1
Mr.S.R.Anbarasu for R3

ORDER

The appellants in A.S.No.45 of 2011 on the file of the Sub Court, Valliyoor, are the revision petitioners herein.

2.The respondents herein had filed O.S.No.350 of 2004, on the file of the Principal District Munsif Court, Valliyoor, for the relief of partition and separate possession. The above said suit was decreed on 16.12.2010. The defendants 1 and 2 have preferred A.S.No.45 of 2011 before Sub Court, Valliyoor.

3.Pending appeal, the defendants/appellants have filed I.A.No.235 of 2016 under Order 41 Rule 27 of C.P.C. to receive the additional documents. The said application was posted along with an appeal.

4.The arguments in the appeal were heard 28.11.2016 and it was posted for judgment on 06.12.2016. However, the judgment was not delivered and it was again re-posted to 16.02.2016. The appellate Court has not delivered the



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judgment and posted the matter on 08.02.2017. On 08.02.2017, the appeal was *suo-motu* reopened by the Court for clarification and again posted to 15.02.2017 for arguments.

5. Pending appeal, the first appellant namely, the mother had passed away and for amending the cause title, the appeal was again adjourned to 11.04.2017. In the meantime, on 22.08.2017, the appeal was dismissed for default due to the non-appearance of the appellants. The appellants had filed I.A.No.1 of 2019 seeking to condone the delay of 300 days in filing an application to restore the appeal, which was dismissed for default. This application was dismissed by the first appellate Court on the ground that no proper reason had been assigned. Challenging the same, the present revision petition has been filed.

6. According to the learned Counsel appearing for the revision petitioners, the appellants have already argued the appeal and later, it was *suo-motu* reopened by the concerned Court. Therefore, there was no lethargic attitude on the part of the appellants in prosecuting the appeal. On 22.08.2017, due to the non-appearance of the Counsel, the appeal has been dismissed for default. In such circumstances, an opportunity may be granted to argue the appeal on merits.



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7.Per contra, the learned Counsel appearing for the respondents had contended that the appellants had not assigned any reason, whatsoever, for the delay between 22.08.2017 and 02.12.2018. Hence, the order of the appellate Court may be sustained.

8.I have considered the submissions made on either side and perused the materials available on record.

9.The facts captured above will clearly indicate that the appeal has been filed in the year 2011 and the arguments have been heard by the Court in November 2016 itself. However, judgment was not delivered. The appeal was reopened on 08.02.2017 *suo-motu* by the Court. In the said circumstances, this Court is of the considered opinion that one more opportunity to be granted to the revision petitioners to make their submissions in the appeal. However, since the delay has not properly explained, this Court is inclined to allow the application on terms.



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10. With the above said deliberations, this Court is inclined to pass the following orders:-

a) the order impugned in the revision petition is hereby set aside and the revision petition stands allowed with a condition to pay a sum of Rs.5,000/- to the learned Counsel appearing for the respondent in the revision petition on or before **28.02.2025**;

b) in case, if the order of this Court is complied with, both the parties are directed to complete their submissions on or before **20.03.2025**.

11. Accordingly, this Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

12. Post the revision petition on **03.03.2025 "for reporting compliance"**.

14.02.2025

Internet: Yes/No
Index: Yes/No
RJR



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R.VIJAYAKUMAR, J.

RJR

To

The Sub Court, Valliyoor.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

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