



C.R.P.(NPD)(MD).No.1464 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD).No.1464 of 2022
and CMP(MD).No.6068 of 2022

P.Periyasamy

... Petitioner/Respondent/Plaintiff

-VS-

1.Paramasivam

2.Alaguperumal

3.Kaliyappan

...Respondents/Petitioners/Defendants

PRAYER: The Civil Revision Petition has been filed under Section 115 of C.P.C, to call for the records of the fair and executable order in I.A.No.233 of 2019 in O.S.No.73 of 2016 on the file of the District Munsif Court, Palani dated 06.0.2022 and to set aside the same and allow this civil revision petition.

For Petitioner : Mr.A.Haja Mohideen

For Respondents : Mr.D.Venkatesh

ORDER

The plaintiff in O.S.No.73 of 2016 on the file of the District Munsif Court, Palani is the revision petitioner.



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2.The said suit has been filed for the relief of permanent injunction. Pending suit, the defendants are set exparte and an exparte order came to be passed on 14.12.2016. I.A.No.233 of 2019 has been filed by the defendants to condone the delay of 780 days in filing an application under Order 9 Rule 13 C.P.C. The said application was allowed by the trial Court on payment of cost of Rs.3000/-. Challenging the same, the plaintiff has preferred the present civil revision petition.

3.According to the learned counsel for the revision petitioner, the reason assigned in the condone delay application is not believable and the defendants have not produced any document that there was an agreement between the parties not to raise the dispute before the Court. The petitioner had further contended that the delay is huge and it has not been properly explained.

4.Per contra, the learned counsel for the respondents herein had contended that one of the sons has filed the suit as against his father and his brothers. Therefore, considering the relationship between the parties, the trial Court has proceeded to allow the application on payment of cost. Hence, he prayed for dismissing the revision petition.



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5.I have considered the submissions made on either side and perused the material records.

6.The defendants in a suit for permanent injunction has been set exparte on 14.12.2016 for not filing the written statement. A perusal of the affidavit filed in support of the condone delay application reveals that there was a mediation in the Village and the plaintiffs had agreed that he would not make a claim over the property. Therefore, the defendants had contended that they have not contacted their counsel for filing of the written statement. However, the defendants have not produced any document to show that any such agreement was reached between the parties. However, the trial Court has proceeded to allow the condone delay application on payment of cost, considering the fact that one of the sons has filed the suit as against his father and other brothers.

7.Considering the fact that the defendants have been set exparte for the first time and the application has been filed giving reasonable cause, this Court is of the opinion that it need not be interfered with. In



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such circumstances, there are no merits in the Civil Revision Petition and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

8.Since the suit is of the year 2016, the trial Court is directed to dispose of the suit on or before 30.11.2025.

17.02.2025

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

To

1.The District Munsif, Palani

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

msa

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