
(2012) 11 MAD CK 0142

In the Madras High Court

Case No : C.R.P. (NPD) . No. 1665 of 2006

Andal, Amudha, Amirthavalli and Rani

APPELLANT

Vs

Selvaraji Ammal and Others

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Citation : (2012) 11 MAD CK 0142

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : V. Sivakumar, for the Appellant; K. Subburam, for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

The Honourable Mr. Justice T. Mathivanan

1. This memorandum of civil revision petition has been filed by the petitioners who are the plaintiffs in the suit O.S. No. 47 of 1996. It is manifested from the records that the suit in O.S.No. 47 of 1996 appears to have been filed by the revision petitioners against the respondents herein seeking the relief of partition. During the pendency of the suit, the original plaintiff had passed away and subsequently, the revision petitioners being the legal representatives of the deceased original plaintiff were impleaded. It is obvious to note that excepting R2 who is the defendant in the suit, other defendants remained ex-parte. However, the suit was dismissed for non prosecution on 31.07.2002. For the purpose of setting aside the order of dismissal of the suit, there was a delay of 751 days and in order to condone the delay, the revision petitioners have filed an interlocutory application in I.A.No. 71 of 2005 and the second respondent herein has contested the petition. However, the learned trial Judge has not satisfied with the reasons assigned by the petitioners and dismissed the petition on 18.10.2005. Impugning the order of dismissal, the petitioners who are the plaintiffs in the suit O.S.No. 47 of 1996 have preferred this civil revision petition.

2. When the matter came up for hearing, this Court has heard the learned counsel for the petitioners as well as the second respondent. Though the remaining respondents were served with notice, they have not chosen to appear either in person or through their respective counsels. This Court has also considered the submissions made by the learned counsels on either side and perused the materials available on record. It is more relevant to note here that the above suit in O.S. No. 47 of 1996 has been filed for the relief of partition. Now the learned counsel for the petitioners submitted that unless the delay of 751 days is condoned, the plaintiffs would be put to irreparable loss and hardships.

3. The suit is related to the year 1996 and it is also apparent that the civil revision is pending from 2006 onwards. Under these circumstances, considering the submissions made by the revision petitioners and the objections raised by the second respondent, the impugned order dated 18.10.2005 and made in I.A.No. 71 of 2005 in O.S.No. 47 of 1996 is set aside and the application in I.A.No. 71 of 2005 is allowed and the delay of 751 days in filing the application to set aside the order of dismissal is condoned on terms that the petitioners shall pay a costs of Rs. 1000/- to the Taluk Legal Services Authority, Parangipettai within ten days from the date of receipt of a copy of this order, failing which the order shall automatically be cancelled without any further reference to this Court. In the result, the Civil Revision Petition is allowed.