

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (NPD) NO.1932 OF 2011
AND M.P.NO.1 OF 2011

1. Jaganatha Reddiar (deceased)
2. Premavathy
3. Ramesh
4. Sivakumar
5. Prabakaran
6. Vijaya

... Petitioners

(Petitioners 2 to 6 brought on record
as LR's of the deceased sole petitioner
vide order of court dated 05.11.2014
made in M.P.No.1 of 2014 in CRP (NPD)
No.1932 of 2011)

Versus

1. The District Collector
Perambalur.
2. Revenue Divisional Officer
Perambalur.
3. Tahsildar
Veppanthattai Taluk
Perambalur District.

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the Fair and Decreetal order dated 12.10.2009 made in I.A.No.569 of 2009 in O.S.No.42 of 2005 on the file of the District Munsif Court, Perambalur.

For Petitioners : Mr.M.Kamalanathan
For Respondents : Mr.M.Jayashree
Government Advocate

ORDER

This Civil Revision Petition is directed against the order dated 12.10.2009 passed in I.A.No.569 of 2009 in O.S.No.42 of 2005 by the learned District Munsif, Perambalur.

2.The first petitioner filed a suit in O.S.No.42 of 2005 against the respondents herein for declaration of title and for mandatory injunction directing the respondents to change the classification of the suit land.

3.The first petitioner has averred in the plaint that the suit property was originally owned by the predecessors of one Ramalinga Reddiar and his wife Alamelu Ammal. After their demise, the suit property was inherited by their legal heirs viz., Ponnusamy and Meenambal. After the death of Ponnusamy, his sole legal heir, who is the first petitioner herein, along with Meenambal have been in possession and enjoyment of the suit property. The said Meenambal was issueless and died intestate on 27.04.1987. After her demise, the first petitioner has become the absolute owner of the suit property. It is further averred that

the lands are rainfed lands and the respondents have classified the land as Ela Tharisu for non payment of kist.

4.The respondents received summons in the suit. For non filing of the written statement, the respondents were set exparte and an exparte decree was passed on 22.08.2005 by the the learned District Munsif, Perambalur.

5.The first petitioner issued a notice dated 13.09.2007 to the respondents informing them about the exparte decree passed in the suit. Though the respondents received the said notice on 14.09.2007, they chose to file an application only in 2009 in I.A.No.569 of 2009 to condone the delay of 1187 days in filing the application to set aside the exparte decree. The said application was resisted by the first petitioner by filing a counter affidavit. Despite serious objections raised by the first petitioner, the learned District Munsif, Perambalur, condoned the delay and allowed the application vide order dated 12.10.2009.

6.Aggrieved by the order dated 12.10.2009 in I.A.No.569 of 2009, the present Civil Revision Petition is filed.

7. During the pendency of this Civil Revision Petition, the first petitioner died and petitioners 2 to 6 were brought on record as legal representatives of the first petitioner vide order dated 05.11.2014 passed by this Court in M.P.No.1 of 2014 in C.R.P.(NPD) No.1932 of 2011.

8. Mr. M. Kamalanathan, learned counsel for the petitioners has submitted that the respondents had received summons in the suit. But, for non filing of their written statement, they were set exparte. It is further submitted that vide notice dated 13.09.2007, the respondents are informed by the first petitioner about the exparte decree passed in the suit. However, without giving any explanation, the respondents filed this application only on 22.11.2008. The learned counsel has further submitted that the inordinate delay was not properly explained by the respondents and hence, the order impugned in this Civil Revision Petition is liable to be set aside.

9. Per contra, the learned Government Advocate has submitted that the Tasildar Office, which was functioning in Perambalur Region at Perambalur, was shifted to Veppanthattai in the year 2004 and the bundles have been mixed with the other papers. Hence, the respondents could not properly instruct their counsel to file their written statement. The learned Government Advocate has

further submitted that the delay was explained by the respondents and the same was also accepted by the trial Court. Hence, the discretionary order need not be set aside by this Court.

10.It is not in dispute that the respondents had received summons in the suit and they had knowledge about the suit even in the year 2005. Further, the exparte decree was passed on 22.08.2005 and the same was communicated by the first petitioner vide notice dated 13.09.2007, however, the application to set aside the exparte decree was filed on 22.11.2008. In the affidavit filed in support of the condone delay application, the respondents have stated that in the year 2004, the Tasildar Office was shifted from Perambalur to Veppanthattai and there is absolutely no explanation for the delay between 14.09.2007 and 22.11.2008. The respondents have not explained their inaction for more than one year and two months.

11.The Honourable Supreme Court in its judgment in ***OFFICE OF THE CHIEF POST MASTER GENERAL AND OTHERS VS. LIVING MEDIA INDIA LIMITED AND ANOTHER [2012 (2) CTC 240]*** has held as follows;

“12.It is not in dispute that the person(s) concerned were well aware or conversant with the

issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and

acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to consideration degree of procedural re-tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

12. Applying the principles laid down by the Supreme Court, I am of the view that the respondents have not shown sufficient cause to condone the delay.

13.In the result, the order dated 12.10.2009 passed in I.A.No.569 of 2009 in O.S.No.42 of 2005, by the learned District Munsif, Perambalur, is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.At this juncture, the learned counsel for the petitioners has submitted that the petitioners are ready to pay the entire kist amount to the Government. Hence, it is open to the respondents to issue notice to the petitioners for recovery of the kist amount.

20.01.2015

Index : Yes/No
Internet : Yes/No
SMS

To

The District Munsif Court
Perambalur.

K.KALYANASUNDARAM, J.
SMS

C.R.P (NPD)NO.1932 OF 2011

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