

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) NO.208 OF 2015
AND M.P.NO.1 OF 2015

1.Pullaiyannan
2.Sembakkal
3.Perumal
4.Chinasamy
5.Pachiappan

... Petitioners

Vs.

1.Kunjanna Gounder @ Kunji Gounder
2.Myleeammal
3.Subramanian

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order of the Subordinate Judge's Court at Mettur dated 23.06.2014 in I.A.No.81 of 2010 in Unnumbered A.S.

For Petitioners : Mr.P.Valliappan

ORDER

The petitioners are challenging the order dated 23.06.2014 passed in I.A.No.81 of 2010 in Unnumbered A.S., by the learned Subordinate Judge, Mettur.

2.The respondents filed the application in I.A.No.81 of 2010 to condone the delay of 361 days in filing an appeal against the judgment and decree dated 31.08.2009 in O.S.No.248 of 2001. The respondents as plaintiffs filed the suit in O.S.No.248 of 2001 for declaration of their title to the property in S.No.204/3, measuring an extent of 7.38 acres and for consequential permanent injunction.

3.The respondents had also filed another suit in O.S.No.149 of 2004. In view of the decree passed in O.S.No.149 of 2004, the suit in O.S.No.248 of 2001 was dismissed.

4.Aggrieved by the judgment and decree passed in O.S.No.149 of 2004, the petitioners filed an appeal in A.S.No.25 of 2009. When the appeal was taken up for hearing, the respondents filed the application in I.A.No.81 of 2010 contending that since the suit filed by them in O.S.No.149 of 2004 was decreed in their favour, they did not file the appeal against the judgment and decree passed in O.S.No.248 of 2001. It is further averred that non-filing of the appeal in time is neither wilful nor wanton and it is a bonafide one. The application was opposed by the petitioners by filing a detailed counter affidavit. Despite the objection, the Trial Court condoned the delay by imposing cost of Rs.1500/- vide order dated 23.06.2014.

5. Against the order dated 23.06.2014 in I.A.No.81 of 2010, the present Civil Revision Petition is filed.

6. Mr.P.Valliappan, learned counsel for the petitioners has submitted that the application was filed as an after thought and the delay was not properly explained by the respondents. It is further submitted that the respondents have not shown sufficient cause for condoning the delay.

7. It is not in dispute that the suit in O.S.No.248 of 2001 was filed for declaration of title in respect of the land to an extent of 7.38 acres and for consequential permanent injunction. It is also not disputed that the suit filed by the respondents in O.S.No.149 of 2004 was decreed in their favour and the appeal filed by the petitioners are pending before the Appellate Court. The respondents have specifically stated that in view of the decree passed in the suit, they did not file the appeal in time and the delay was a bonafide one. In my view, the Appellate Court has rightly exercised its discretionary jurisdiction in condoning the delay. Hence, I do not find any illegality or irregularity in the order impugned in this Civil Revision Petition.

8. However, considering the facts and circumstances of the case, the respondents are directed to pay additional cost of Rs.5,000/- (Rupees Five

thousand only) to the petitioners, within a period of three weeks from the date of receipt of a copy of this order.

9. With the above observation and direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

03.02.2015

Index : Yes/No
Internet : Yes/No
TK

To

The Subordinate Judge
Mettur.

K.KALYANASUNDARAM, J.

TK

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