



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 09.10.2015

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.P (MD) No.2134 of 2015

WEB COPY

1.Sankaran

2.Ravi

.. Petitioners/Petitioners/Defendants 1 & 2

-vs-

1.Sahadevan

2.Duraisamy

.. Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1908 to set aside the fair and decree order made in I.A.No.691 of 2010 in O.S.No.624 of 2004 on the file of the learned District Munsif, Thuraiyur, dated 18.06.2015.

For Petitioners

: Mr.R.Sundar

ORDER

As only a short point is involved, we shall dispose of the Civil Revision Petition today at the admission stage itself.

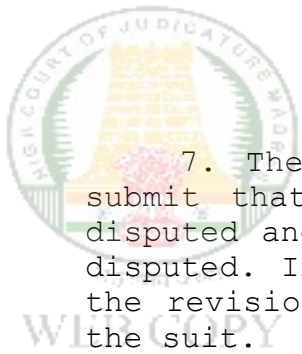
2. This revision arises out of dismissal of I.A.No.691 of 2010 in O.S.No.624 of 2004 on the file of the learned District Munsif, Thuraiyur, which was filed by the defendants 1 and 2 in the said suit.

3. Sahadevan and Duraisamy have instituted the suit in O.S.No.624 of 2004 in the Court of the learned District Munsif, Thuraiyur, seeking injunction with respect to the properties in Thenparanadu Village in Trichy District. There are eight defendants. Defendants 1 and 2 are the revision petitioners herein. The defendants 3 to 8 have already filed their written statement. They have set up a plea opposing plaintiffs' case, which is independent of the stand of defendants 1 and 2. When the suit came up for filing written statement of the defendants 1 and 2, they have not filed written statement, thus they were set exparte. Subsequently, after a delay of 1339 days, they have filed their written statement along with I.A.No.691 of 2010 to condone the delay.

4. In their affidavit, the defendants 1 and 2 have stated that in view of the drought situation in the Village, they have gone to Kerala to eke out their livelihood and when they returned to their native Village, they were told that they were already set exparte in the suit, in these circumstances, they have sought for an opportunity. It was opposed to by the plaintiffs.

5. The trial court diverted its full attention on the aspect of their knowledge of ex parte order and refused to show indulgence to them and thus dismissed their I.A. That is how, defendants 1 and 2 are before us.

6. The learned counsel appearing for the revision petitioners, defendants 1 and 2 would reiterate what was stated in their affidavit filed in support of I.A.No.691 of 2010 and what was argued before the Trial Court.



7. The learned counsel for the revision petitioners would further submit that it is a property matter. The title of the plaintiffs is disputed and the possession, as claimed by the plaintiffs, also has been disputed. In such circumstances, an opportunity could have been given to the revision petitioners and they are ready to get on with the trial on the suit.

8. I have anxiously considered the submission of the learned counsel for the revision petitioners, perused the materials on record and also the impugned order.

9. The trial Court made a literal approach. Earlier, the Judges have taken very strict in these matters. They were of the view that every day of delay has to be explained and that thought has gone. Those Judges have also gone. Now, a new view has emerged. Now, the trend is not to look at the length of delay, but the substance of the matter, whether it presents a 'lis' and there is a scope for adjudication, a meritorious matter should not be allowed to go without adjudication. Merit disposal is always good for both sides. This is the view towards the phrase 'sufficient cause' employed in Section 5 of the Limitation Act.

10. Now, in this case, reasons have been given by the revision petitioners, namely, that they have gone to Kerala to look for greener pasture. That apart, it is a property matter. Defendants 3 to 8 are contesting the suit. Defendants 1 and 2 have also filed their written statement. They are disputing the title and the possession of the plaintiffs. There is much scope for adjudication.

11. In these circumstances, the Trial Court could have applied liberal approach. An opportunity can be given to the defendants 1 and 2 to put forth their case before the Trial Court.

12. In view of the foregoings, the order and fair order of the learned District Munsif, Thuraiyur, passed in I.A.No.691 of 2010 in O.S.No.624 of 2004 are set aside. I.A.No.691 of 2010 stand allowed. Consequently, the exparte decree passed as against the revision petitioners/defendants 1 and 2 are set aside. The learned District Munsif, Thuraiyur will receive the written statement of defendants 1 and 2 on record and frame additional issues, if necessary. At any rate, the suit shall be completed and the suit shall be disposed of within four months from the date of receipt of a copy of this order.

13. Accordingly, the Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar(Crl.side)

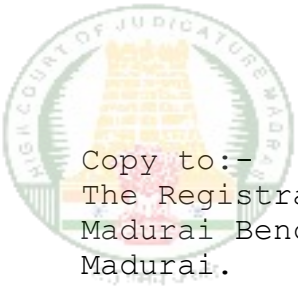
/True copy/

Sub Assistant Registrar

To

1.The Principal District Judge,
Tiruchirappalli District.

2.The Principal District Munsif,
Thuraiyur.



Copy to:-
The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

WEB COPY

+1cc to Mr.R.Sundar, Advocate in SR.59935

C.R.P (MD) No.2134 of 2015
09.10.2015

ps/krk
PBK/NGM-SS/SAR-I 13/10/2015 ::3P-5C: (IT)