



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

C.R.P. (NPD) (MD) No.697 of 2015

and

M.P.(MD) No.1 of 2015

Shenbagam

...Petitioner/Petitioner/Appellant

-vs-

1.Solairaj @ Muralishankar

2.Sathavu @ Ramaraj

3.Tamizhan

4.Chelliah Thevar

5.Muniyasamy Thevar

...Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretal order passed in I.A.No.120 of 2011 in unnumbered A.S.No.....of 2011, on the file of the Subordinate Judge, Srivilliputtur, dated 18.02.2015.

For Petitioner : Mr.M.Ashokkumar

O R D E R

The petitioner is aggrieved by the order, dated 18.02.2015, dismissing the interlocutory application to condone the delay of 444 days in preferring the first appeal challenging the Judgment and Decree, dated 25.03.2010 in O.S.No.1205 of 2004.

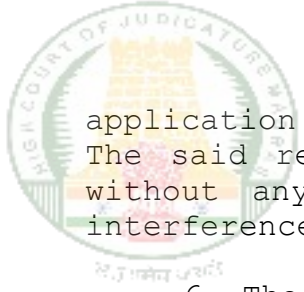
2. The first respondent filed a suit in O.S.No.1205 of 2004, before the learned District Munsif, Srivilliputtur, against the petitioner and the respondents 2 to 5, praying for a decree of declaration and mandatory injunction. The suit was preferred on the strength of settlement deed, dated 16.11.1979, executed by the second respondent in favour of the first respondent. The suit was contested by the petitioner by filing written statement. According to the petitioner, the second respondent mortgaged the property in question and availed loan. The petitioner has taken up a further contention that he has been in possession and enjoyment of the property ever since the date of mortgage.

3. The Trial Court passed a Judgment and Decree, dated 25.03.2010, on merits. The decree, dated 25.03.2010, was challenged by the petitioner before the learned First Appellate Judge along with an interlocutory application in I.A.No.120 of 2011 to condone the delay of 444 days in preferring the first appeal.

4. The learned First Appellate Judge, having found that the petitioner has not given sufficient reason for the delay, dismissed the interlocutory application, by order dated 18.02.2015. The said order is under challenge in this civil revision petition.

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5. The learned counsel for the petitioner contended that the petitioner, in his affidavit filed in support of the interlocutory



application in I.A.No.120 of 2011, explained the reason for the delay. The said reason was not accepted by the learned First Appellate Judge without any basis and as such the order, dated 18.02.2015, requires interference.

6. The petitioner was a party to the Judgment and Decree in the suit in O.S.No.1205 of 2004. The suit was decreed as early as on 25.03.2010. The petitioner failed to prefer first appeal within the statutory period. Though the petitioner was expected to explain each days delay in preferring the first appeal, he has simply stated that there was a move for compromise and as such the appeal was not preferred within the cut-off date. The affidavit filed in support of the application is bereft of particulars. The petitioner in a very casual manner made a statement that subsequent to the decree, there was a proposal for compromise and as such appeal was not filed. The learned Trial Judge has given a factual finding that the petitioner has not produced any material to substantiate his contention with regard to delay. The petitioner received the certified copy of the Judgment and Decree, dated 25.03.2010, in O.S.No.1205 of 2004, on 11.05.2010. However, the appeal was preferred only on 24.08.2011. The petitioner appears to have woken up from slumber only after receiving notice in E.P.No.46 of 2011. The petitioner miserably failed to prove that he was prevented from preferring first appeal within the statutory period. The learned Appellate Judge considered the matter and rightly declined the prayer to condone the delay. Such being the factual position, I do not find any reason to set aside the said order, dated 18.02.2015, passed by the learned First Appellate Judge.

7. In the upshot, I dismiss the civil revision petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Per Admn)

/True copy/

Sub Assistant Registrar

To:

The Subordinate Judge,
Subordinate Court,
Srivilliputtur.

+1CC to M/s.M.Ashokkumar, Advocate in SR.17558

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