

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD) No.3454 of 2014

Sambasivam

... Petitioner

vs.

1. The State of Tamil Nadu
rep. By its District Collector
Tiruvallur District.

2. The Revenue Divisional Officer,
Taluk Office Road,
Ponneri 601 204.

3. The Tahsildar,
Gummidipoondi Taluk
Gummindipoondi.

4. Pugazhendi

... Respondents

Civil Revision Petition filed under Section 115 of CPC against the order and decree dated 24.06.2014 passed in I.A.No.858 of 2013 in O.S.No.112 of 2006 by the learned District Munsif, Ponneri, Tiruvallur District.

For petitioner
For respondents

: Mr.K.S.Ganesh Babu
: Mr.T.Jayaramaraj (R1-3)
Mr.R.Krishnaswamy (R4)

ORDER

Challenging the fair and final order passed in I.A.No.858 of 2013 in O.S.No.112 of 2006 on the file of the District Munsif Court, Ponneri, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.112 of 2006 to direct the defendants 1 to 3 to rectify the patta and Revenue Register from the name of Pugazhendi, S/o Saminathan and to correct the same and for mandatory injunction directing the defendants 1 to 3 to issue patta in the name of the plaintiff-Sambasivam. Since the plaintiff failed to appear before the trial Court on 03.10.2012, he was called absent and the suit was dismissed for default. Thereafter, the plaintiff filed an application in I.A.No.858 of 2013 to condone the delay of 219 days in filing the application to restore the suit, which was dismissed by the trial Court on 24.06.2014. Challenging the same, the plaintiff has filed the above Civil Revision Petition.

3. Heard the learned counsel on either side and perused the materials available on record.

4. In the affidavit filed in support of the application, the plaintiff

has stated that he was regularly attending the case as per his counsel's advice and unfortunately due to the continuous boycott of the Courts from 17.08.2012 to 06.10.2012, the suit was dismissed for non appearance of the party as well as his counsel. Further, he has stated that he was under the impression that the suit is pending for trial before the Court below. That apart, the plaintiff has also stated that during the 1st week of June 2013, when his counsel verified the "A" diary, he came to know that the suit was dismissed for non prosecution on 03.10.2012.

5. Contrary to the averments stated in the affidavit filed in support of the application, the plaintiff in his evidence, in his cross-examination, has stated that he was very much present in the Court on 03.10.2012 and he knew about the dismissal of the suit for non prosecution on 03.10.2012.

6. When the plaintiff himself was present in the Court and he had the knowledge about the dismissal of the suit, the reason adduced for the delay of 219 days in filing the application to restore the suit, cannot be accepted. Further, when the plaintiff had the knowledge about the dismissal of the suit, he should have either appeared before the trial

M. DURAISWAMY,J.,

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Court and sought for adjournment or should have filed an application immediately for restoration of the suit. Since the delay was not properly explained by the plaintiff, the trial Court has rightly dismissed the application. I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs.

28.09.2016

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To
The District Munsif, Ponneri,
Tiruvallur District.

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