

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4799 of 2015
and M.P.No.1 of 2015

1.V.Mani
2.M.Amsa
3.M.Sudha

.. Petitioners/Defendants

Vs.

V.Ganesan

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.11.2015 in I.A.No.949 of 2013 in O.S.S.R.No.8114 of 2013 on the file of the District Munsif Court, Ambattur.

For Petitioners : Mr.V.Subbarayan

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 21.11.2015 in I.A.No.949 of 2013 in O.S.S.R.No.8114 of 2013 on the file of the District Munsif Court, Ambattur.

2.The respondent herein as a plaintiff filed a suit in O.S.S.R.No.8114 of 2013 for declaration that the settlement deed with respect to the suit property, which was obtained by the defendants 2 and 3 from the plaintiff's father in a fraudulent manner as null and void and not binding on the plaintiff and for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of 17 ½ cent of the suit property and other reliefs. When the plaint was presented before the trial Court on 01.02.2011, it was returned for rectification of some defects. But it was not represented within the time stipulated by the Court. Therefore, the plaintiff/respondent has filed an application in I.A.No.949 of 2013 for condonation of delay of 782 days in representing the plaint. The trial Court, after hearing both sides, allowed the application on payment of costs of Rs.500/- to the defendants/respondents therein, against which, the present revision has been preferred by the defendants.

3.Learned counsel for the revision petitioners/defendants submits that the respondent/plaintiff has not given any sufficient cause for condonation of delay. In that application, the

respondent/plaintiff stated that the plaint has been returned on 31.03.2011 for compliance of the previous returns. Due to the reorganisation of the Court, the returned bundle was mixed up, so it was not made available to the petitioner to comply with the returns. It was further stated that once again, the bundle has been returned on 10.10.2011. Thereafter only, the plaintiff came to know that the suit is yet to be numbered as the bundle was not traced. After rectifying the defects, the plaintiff/respondent represented the same with the delay of 782 days. Learned counsel for the defendants further submits that the above averment is wrong, because the Court has been constituted even on 12.12.2008. So the averment in the application that reorganisation of the Court is false. The Court has discretion to condone the delay, but that discretion must be exercised judicially. That factum was not considered by the trial Court. Therefore, he prayed for allowing the revision.

4. At the time of admission, argument of the learned counsel for the revision petitioners is heard in length.

5. On perusal of typed set of papers, it reveals that one of the brother filed the suit against his another brother and his daughters

(i.e.) daughters of the first defendant for setting aside the settlement deed executed by his father in favour of the defendants 2 and 3 in the year 2005. It is also an admitted fact that the plaint has been returned for rectifying some defects, but it was not represented within the stipulated time. Hence, the respondent/plaintiff filed an application for condonation of delay of 782 days in representing the plaint.

6.It is true, condonation of delay is the judicial discretion of the Court and that has been exercised judicially. This application is not for condonation of delay in filing an application to restore the suit or set aside the exparte decree. It is only an application to condone the delay in representing the plaint and the suit is yet to be numbered. In such circumstances, I am of the view, the defendants/revision petitioners have no right to interfere with the matter, which is between the Court and the respondent/plaintiff. If the Court found that there is sufficient cause for condonation of delay, the Court has discretionary power to condone the delay. It is to be noted that the trial Court without considering the stated settled proposition of law, ordered notice and so the revision petitioners/defendants challenging the impugned order passed by

the trial Court.

7. Furthermore, it is true, the Court has been constituted on 12.12.2008, so the plaintiff cannot state that the bundle was mixed with other records. But the trial Court has considered the aspect that the reason assigned by the respondent/plaintiff to condone the delay is sufficient and rightly allowed the application on payment of costs. So the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The revision petitioners/defendants have no locus standi to file a counter in the application and adjudicate the matter, since the matter is between the respondent/plaintiff and the Court. The civil revision petition deserves to be dismissed and it is hereby dismissed.

8. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.01.2016

Index: Yes/No

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To

The District Munsif Court, Ambattur.

R.MALA,J.

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