

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1715 of 2016

Sakaravarthi

... Petitioner

Vs.

1.Chinnathambi (deceased)

2.Azhaliammal (Deceased)

3.Kannan

4.Mayavan

... Respondents

(R3 & R4 recognised as LRS of the deceased R1 & R2 as they died on 15.01.2010 and 04.02.2015 respectively vide order dated 20.04.2016 made in M.P.No.1 of 2015 in C.R.P.SR.No.91021 of 2015)

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order passed in I.A.No.769 of 2013 in O.S.No.619 of 2009 dated 20.11.2014 on the file of the District Munsif, Sankarapuram.

For Petitioner : Ms.G.V.Seetha Lekshmi

ORDER

Challenging the fair and final order passed in I.A.No.769 of 2013 in O.S.No.619 of 2009 on the file of the District Munsif, Sankarapuram, the plaintiff has filed the above Civil Revision Petition.

2. Though notices were served on the respondents 3 & 4 and their names have been printed in the cause list, none appeared for the respondents 3 & 4.

3. The learned counsel appearing for the petitioner had filed a memo stating that the respondents 1 & 2 had died on 15.01.2010 and 04.02.2015 respectively, leaving behind the respondents 3 & 4 as their legal representatives.

4. The plaintiff filed the suit in O.S.No.619 of 2009 for declaration and recovery of possession.

5. Since the plaintiff failed to appear before the trial Court, the suit was dismissed for default on 03.03.2011. Thereafter, the plaintiff filed an application under Order 9 Rule 9 of the Civil Procedure Code to restore the suit on 29.04.2011. Thereafter, the application filed by the plaintiff under Order 9 Rule 9 of the Civil Procedure Code was returned by the Registry of the trial Court on 28.06.2011 for rectifying some defects in the petition. The plaintiff was given ten days time to re-present the papers. However, the

papers were not re-presented in time and there is a delay of 781 days in re-presenting the papers. Thereafter, the plaintiff filed an application in I.A.No.769 of 2013 to condone the delay of 781 days in re-presenting the papers.

6.In the affidavit filed in support of the petition, it has been stated that the plaintiff's Advocate's Clerk had taken the return from the Registry and kept the application in the bundle without re-presenting the papers. The affidavit has been filed by the Advocate Clerk himself. Further, it has been stated that when the plaintiff approached his counsel, the plaintiff came to know about the return made on 28.06.2011 and the application was re-presented immediately thereafter.

7.On a perusal of the averment stated in the affidavit, it is clear that the application was not re-presented only because of the plaintiff's counsel and his Clerk. The delay cannot be attributed to the plaintiff in any manner. When the affidavit has been filed by the Advocate Clerk to condone the delay of 781 days in re-presenting the application, in the interest of justice, the trial Court could have allowed the application. I am satisfied with the reasons stated in the affidavit filed in support of the petition. In view of the same, the fair and decreetal order passed in I.A.No.769 of 2013 in

O.S.No.619 of 2009 are set aside. The application in I.A.No.769 of 2013 stands allowed. The trial Court is directed to dispose of the application filed under Order 9 Rule 9 of the Civil Procedure Code as expeditiously as possible.

8.With these observations, the Civil Revision Petition is allowed. No costs.

Index : No
Internet : Yes
va

17.11.2016

To

1.The District Munsif,
Sankarapuram.

M.DURAIWAMY,J.
va

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