

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

Civil Revision Petition (PD) No.3198 of 2010 &
M.P.No.1 of 2010

1. Vanamayil
2. Ramadass
3. Rajendran
4. Kumar
5. Murugan
6. Vasuki

... Petitioners

Versus

1. Saminathan
2. Silambu

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 02.11.2009 passed in I.A.No.147 of 2009 in C.C.No.67 of 2004 on the file of the II Additional District Munsif, Salem.

For Petitioners : Mr.Saravanakumar
for Mr.R.Subramanian

For Respondents : No appearance

ORDER

Challenging the legality of the Order dated 02.11.2009 passed in I.A.No.147 of 2009 in C.C.No.67 of 2004 on the file of the II Additional District

Munsif, Salem, this revision petition is filed.

2. When this revision petition is taken up for hearing today, Mr.Saravanakumar, learned counsel appearing for the petitioner is present. Despite service of notice on the respondents, they have not chosen to appear before this Court either in person or through their counsel. Hence, they are called absent.

3. Heard Mr.Saravanakumar, learned counsel for the petitioner and perused the grounds of revision along with the impugned Order. Having regard to the relevant facts and circumstances, the following order is being passed on merits in the absence of the respondents.

4. The revision petitioners herein are the defendants in the suit, whereas the respondents 1 and 2 are the plaintiffs. The respondents have filed the suit in O.S.No.67 of 2004 as against the revision petitioners on 27.01.2004 and thereby sought the relief of permanent injunction to restrain them and their men from in any manner interfering with the peaceful possession and enjoyment of the suit property, viz., pathway.

5. It is apparent from the records that the said suit was dismissed for non prosecution on 14.10.2006. Thereafter, there was a delay of 890 days in filing a

petition for setting aside the order of dismissal of the suit and to restore the same on its original file. On account of this, the respondents have come forward with an application I.A.No.147 of 2009 under section 5 of the Limitation Act to condone the delay in filing a petition to restore the suit. This petition was resisted by the revision petitioners by filing their counter statement. However, the trial Judge had proceeded to allow the petition on payment of cost of Rs.2000/-. The said sum of Rs.2000/- was not received by the revision petitioners/defendants and having been aggrieved by the said order, they stand before this Court with this revision.

6. Mr.Saravanakumar, learned counsel representing Mr.R.Subramaniam has submitted that the learned trial Judge without considering the commission of irregularity on the part of the respondents, has erroneously proceeded to pass the impugned order imposing a cost of Rs.2000/-. He has also submitted that the suit was dismissed for default on 14.10.2006. But, instead of filing a petition to restore the suit within the prescribed period of 30 days, the respondents had kept quiet for a sizable period upto 890 days and all of a sudden they have come forward with an application in I.A.No.147 of 2009 to condone the said delay.

7. In this connection, Mr.Saravanakumar, while advancing his arguments has invited the attention of this Court to para 4 of affidavit filed by the

respondents in support of their petition. On a perusal of para 4 of the affidavit, it is revealed that they had engaged one Mr.Ganesan as their Counsel at the time of filing of the suit. Later they had engaged Mr.Gowthamapoobalan and subsequently, they have engaged another lawyer Mr.S.P.Krishnamoorthy and lastly Mr.Madheswaran was engaged by them. In this connection, they have stated in the above said paragraph that no one had informed them about the dismissal of the suit and finally they engaged Mr.S.P.Venkatesh to file a petition to condone the delay of 890 days under section 5 of the Limitation Act. Mr.Sraravanakumar has also submitted that the revision petitioners had filed the suit as against the respondents in O.S.No.897 of 2007 on the file of the District Munsif, Salem seeking the relief of permanent injunction with respect to the same subject matter. In that suit, the respondents have also filed their written statement and subsequently, they had filed an application in I.A.No.1129 of 2008 for the impleadment of the Director, Survey Department, the Commissioner, Salem Corporation and Tahsildar, Salem and that petition was allowed after due enquiry.

8. This Court has also perused the impugned Order and finds that the Order itself is erroneous in nature and without considering the real issue with proper perspective, the learned trial Judge had proceeded to allow the petition and therefore, this revision is deserved to be allowed. It is to be noted that the

suit filed by the respondents in O.S.No.67 of 2004 was the earlier suit. Then, with respect to the very same subject matter seeking the relief of permanent injunction, the revision petitioners have filed a suit in O.S.No.897 of 2007 on 30.07.2007 as against the respondents. The suit filed by the revision petitioners is still pending. If the respondents have any grievance, they can very well seek redressal in the said suit.

9. Accordingly, this Civil Revision Petition is allowed and the impugned Order dated 02.11.2009 is set aside and the petition in I.A.No.147 of 2009, which is filed under section 5 of the Limitation Act, is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

23.09.2016

Index:yes/no
Internet:yes

vrc

To

The II Additional District Munsif,
Salem.

T.MATHIVANAN, J.,

vrc

C.R.P.(PD) No.3198 of 2010

23.09.2016