

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.11.2016

Coram:

The Honourable Mr. **Justice V.PARTHIBAN**

C.R.P.(NPD) No.3322 of 2008

Kamala

.. Petitioner

Vs.

1.S.M.Rathinam

2.Indira

3.S.Latha

4.S.Dhanalakshmi

.. Respondents

Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the fair and decreetal order of the learned Principal Subordinate Judge, Krishnagiri, dated 20.12.2007 in I.A.No.20 of 2007 in A.S.unnumbered.

For Petitioner : Mr.V.Nicholas

For Respondent : Mrs.Uma Maheswari for M/s.C.Jagadish
Mr.P.Mani for R2
No appearance for RR3 and 4.

ORDER

The present Civil Revision Petition is filed against the order passed by the learned Principal Subordinate Judge, Krishnagiri, dated 20.12.2007, in I.A.No.20 of 2007 in unnumbered A.S., dismissing the I.A., seeking condonation of delay of 9 years 7 months and 16 days in preferring the appeal.

2. Heard learned counsels appearing for the petitioner and the respondents.

3. The Civil Revision Petitioner was the plaintiff, has approached the District Munsiff, Krishnagiri, in O.S.No.174 of 1992, seeking declaration that she is the only wife of the 2nd defendant therein. According to the plaintiff, she was married to the 2nd defendant, as per caste custom in about 1974 in the presence of village and caste elders. The 1st defendant who is said to have married to the 2nd defendant earlier was divorced by the 2nd defendant as per the caste custom, earlier to the marriage of the plaintiff to the 2nd defendant.

(b) The claim of the plaintiff was sought to be resisted by the 2nd defendant in the suit claiming that it was only the 1st defendant who is the legally wedded wife and she alone was nominated by the 2nd defendant as his wife for pensionary benefits. It was further contended in the written statement that there was no divorce between the 1st defendant and 2nd defendant as per caste system and no such divorce ever took place. Even though it appears from the facts that both the plaintiff and the 1st defendant were living under the same roof, the marriage between the 1st and 2nd defendant was subsisting and the so called marriage between the plaintiff and the 2nd defendant is held to be not valid in law.

4. The trial court advertent to the submissions of the parties dismissed the suit vide its judgment dated 16.07.1997. The trial court has reasoned that there was no sufficient cause shown by the plaintiff for the grant of relief and only with the intention to appropriate the pensionary benefits, the plaintiff had come forward with the suit for declaration and for injuncting others from claiming the benefits. According to the trial court, there was no evidence at all in support of the plaintiff's claim. Hence, dismissed the suit.

5. The plaintiff in the suit filed an unnumbered A.S., on the file of the Principal Subordinate Judge, Krishnagiri, with I.A.No.20 of 2007 seeking condonation of delay of 9 years 7 months 16 days, in filing the appeal.

6. In the affidavit filed in support of the I.A., the revision petitioner/plaintiff had stated some reasons which reasons were hardly convincing for condonation of extraordinary delay. In fact, the affidavit disclose the fact that the plaintiff was living with the 2nd defendant all along till his death in 2006. In such circumstances, what prevented the Civil Revision Petitioner from prosecuting her claim was not properly explained, particularly, the delay is enormous and inordinate. The said I.A., was sought to be resisted by the

respondent in the appeal denying the averments made in the affidavit filed by the petitioner/plaintiff therein.

7. The learned Principal Subordinate Judge, Krishnagiri, after hearing the rival submissions passed the order on 20.12.2007, dismissing the I.A., as there was absolutely no sufficient cause shown to allow the petition. In the absence of any legally acceptable explanation, the First Appellate Court was left with no option, as such come to the conclusion viz., dismissal of the suit. Therefore, the decision of the First Appellate Court was perfectly in order and therefore, the same does not call for any interference from this court.

8. In view of the above, this Civil Revision Petition is dismissed.
No costs.

11.11.2016

Index:Yes/No

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V.PARTHIBAN, J.

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To
The Principal Subordinate Judge,
Krishnagiri.

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