

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) Nos.694 & 695 of 2016

Santha

W/o.N.Thangaraj

D.No.95, Opp. Sitra Avinashi Road,

Civil Aerodrome Post, Coimbatore – 64. .. Petitioner in both CRPs

Vs

K.Palanisamy Gounder (Died)

S/o. (Late) Kalappa Gounder

Pallapalayam Village,

Ottarapalayam, Sulur Taluk

Coimbatore.

1.Sri Madhavi Kutty

W/o.A.Parthan

No.13, P & T Quarters,

Race Course, Coimbatore – 641 018.

...1st Respondent in CRP No.694 of 2015

2.Savithri

W/o. Late Palanisamy Gounder

D.No.16/12, Nanjappa Thevar Street,

Pallapalayam, Sulur PO,

Coimbatore – 641 402.

...2nd Respondent in CRP No.694 of 2015

...1st Respondent in CRP No.695 of 2015

3.P.Loganathan

S/o. Late Palanisamy Gounder

D.No.16/12, Nanjappa Thevar Street,

Pallapalayam, Sulur PO,

Coimbatore – 641 402.

...3rd Respondent in CRP No.694 of 2015

...2nd Respondent in CRP No.695 of 2015

4.P.Sanjaikumar

S/o. Late Palanisamy Gounder

D.No.16/12, Nanjappa Thevar Street,

Pallapalayam, Sulur PO, Coimbatore – 641 402.

...4th Respondent in CRP No.694 of 2015

...3rd Respondent in CRP No.695 of 2015

Common Prayer:- Civil Revision Petitions filed under Article Section 115 of the Civil Procedure Code, praying to set aside the order dated 14.10.2015 in I.A.No.2809 of 2013 and I.A.No.2173 of 2014 respectively in O.S.No.845 of 1990 on the file of the Principal District Munsif Court, Coimbatore.

For Petitioner :Mr.N.Karthikeyan

COMMON ORDER

The 2nd plaintiff (Santha) is the revision petitioner herein.

2. The suit in O.S.No.845 of 1990 has been filed by one P.T.Kunjubalu and Santha. The said suit was dismissed for default on 04.09.1992 on account of no instructions having been reported by the counsel on record.

3. Subsequently, an application has been taken out by the revision petitioner/2nd plaintiff in I.A.No.2809 of 2013, under Section 5 of the Limitation Act to condone the delay of 7445 days i.e., from 03.10.1992 to 21.02.2013, in filing the application to restore the suit. That application came to be dismissed with cost of Rs.3,000/- payable to the respondents, by the Principal District Munsif Court, Coimbatore.

4. The second plaintiff also filed an application in I.A.2173 of 2014 seeking to implead the respondents 2,3,4 as defendants 2,3 & 4 as legal heirs of the deceased first defendant.

5. The learned counsel for the revision petitioner would submit that because of her husband's employment, which is a transferable job all over India, the revision petitioner was not able to concentrate on the case.

6. The learned counsel for the respondents would submit that this contention cannot be accepted, when people living in electronic age and not in stone age.

7.The perusal of the order passed by the Court below in I.A.No.2809 of 2013, would reveal that the dismissal of the application is justified and the order runs as under :

“ This petition to condone the delay of 7445 days in filing the petition to restore the suit which was dismissed for default on 04.09.1992. The reason for delay is said to be that her counsel reported no instructions and she could not contact her counsel and she had to go to various places all over India owing to her husband's employment. But whether a party to the suit would ordinarily leave (the matter without) following it up for about 20 years?. No prudent man will accept the claim of the petitioner. The petitioner had slept over her case for 20 years”

8. Having found no merits, the lower Court has dismissed the I.A.No.2809 of 2013 in O.S.No.845 of 1990, with costs. Consequently I.A.2173 of 2014 has also been dismissed.

9. This Court does not find any infirmity in the order passed by the Court below and the respondents cannot be kept under suspended animation on account of the procrastinating attitude of the 2nd plaintiff/revision petitioner herein.

10. The application in I.A.No.2173 of 2014 in O.S.No.845 of 1990 on the file of the Principal District Munsif, Coimbatore, has been filed by the 2nd plaintiff to implead the legal heirs of deceased Palanisamy Gounder (1st defendant in O.S.No.845 of 1990) as proposed defendants 2 to 4. The Court below has made an observation that when the suit itself is not restored, there is no question of taking up the application to implead the legal heirs. On that ground, the petition to implead the legal heirs is also dismissed.

11. Rightly, on consideration of merits the Court below has chosen to dismiss the application filed to condone the delay with costs. In the opinion of this Court, the cost should have been not simply Rs.3,000/- but more than that. Therefore, both the revision

petitions are liable to be dismissed and it is dismissed accordingly.

No costs.

11.03.2016

ds

To:

The Principal District Munsif Court,
Coimbatore.

S.VIMALA,J.

ds

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