

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.07.2016

Coram

The Hon'ble Mr.Justice M.DURAISWAMY

CRP.NO.83 of 2013
and CMP No.1157 of 2016

1. Sundaram
2. Andal Ammal
3. Selvi Ammal

...Petitioners

Vs

1. Nagapoosanam
2. Janaki
3. Chandraamal

... Respondents

Civil Revision Petition filed under Section 227 of the Constitution of India against the order passed in I.A.No.129 of 2009 in A.S.No.Nil/2009 dated 05.11.2012 on the file of Subordinate Judge, Arni.

For Petitioners : Mr.R.Margabandhu

For Respondents : Mr.C.Prakasam (R1-2)
NA-R3

O R D E R

Challenging the fair and decreetal order passed in I.A.No.129 of 2009 in A.S.No.Nil of 2009, on the file of

Subordinate Judge, Arni, the defendants in O.S.No.712 of 1979 on the file of the District Munsif Court, Tiruvannamalai, which was subsequently transferred to the file of the District Munsif Court, Polur and re-numbered as O.S.No.578 of 1986, have filed the above Civil Revision Petition.

2. The respondents herein filed the suit in O.S.No.721 of 2009 for partition and separate possession on the file of the District Munsif Court, Tiruvannamalai, which was subsequently transferred to the file of the District Munsif Court, Polur and re-numbered as O.S.No.578 of 1986. The trial Court, passed a preliminary decree in the said suit. Pursuant to the preliminary decree passed in the suit, the plaintiffs filed a final decree petition in I.A.No.241 of 2002 in O.S.No.578 of 1986. The trial Court, after appointing an Advocate Commissioner, passed a final decree on 27.07.2004. Thereafter, the defendants filed an appeal as against the final decree passed in I.A.No.241 of 2002 in O.S.No.578 of 1986, with an application to condone the

delay of 1910 days in preferring the appeal. In the affidavit filed in support of the application, the defendants/applicants have stated that they had engaged a counsel in the final decree petition and that the said counsel did not inform them about the final decree passed in the suit. Further, the defendants/applicants have stated that they came to know that their counsel had died two years prior to the filing of the appeal. Subsequently, their counsel's son, being an advocate, had applied for the copies of the Judgment and decree and handed over the same to them for filing an appeal and in these circumstances, there was a delay of 1910 days in filing the appeal as against the final decree.

3. When the final decree was passed by the trial Court as early as on 27.07.2004, the petitioners/defendants cannot keep quiet for nearly six years for filing an appeal as against the final decree passed. The petitioners/defendants should be diligent in prosecuting the matter in a proper manner. The

conduct of the petitioners/defendants would establish that they are not diligent in prosecuting the matter in a proper manner.

4. Mr.C.Prakasam, learned counsel appearing for the respondents/plaintiffs submitted that pursuant to the final decree passed in I.A.No.241 of 2002 in O.S.No.578 of 1986, the plaintiffs have filed an Execution Petition and also took possession of the suit properties as per the final decree.

5. The averments stated in the affidavit filed in support of the interlocutory application were disputed by the plaintiffs in their counter. The lower Appellate Court, taking into consideration the case of both parties, dismissed the application for condonation of delay, finding that the petitioners/defendants have not explained the reasons in a proper manner.

6. It is settled position that unless the parties seeking for condonation of the delay give sufficient cause for the delay, the delay should not be condoned. The ratio laid down by the Hon'ble Supreme Court of India, in a Judgment reported in ***(2015) 1 SCC 680 (H.Dohil Constructions Private Limited vs. Nahar Exports Limited and Another)*** squarely applies to the facts and circumstances of the present case. In the case on hand, since the petitioners failed to explain the reasons for the inordinate delay of 1910 days, the lower Appellate Court has rightly dismissed the application. Hence, I do not find any error or irregularity in the order passed by the lower Appellate court. The Civil Revision Petition is devoid of merits and hence the same is dismissed. No costs. Connected miscellaneous petition is closed.

22.07.2016

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M.DURAISWAMY,J

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To

Subordinate Judge, Arni.

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