



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 06.06.2016
CORAM
THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

WEB COPY

C.R.P. (MD) No. 1026 of 2016

Inshia Begam

.. Petitioner/Petitioner

Vs.

Asma Bibi

.. Respondent/Respondent

Prayer: Petition filed under Section 115 of Civil Procedure Code to set aside the Order dated 29.04.2009, passed in I.A.No.161 of 2008 in unfilled A.S.No.....of 2008 on the file of the learned Subordinate Judge, Paramakudi.

For Petitioner : Mr. Babu Rajendran

ORDER

This Revision arises out of the order passed by the learned Subordinate Judge, Paramakudi in I.A.No.161 of 2008 in unnumbered A.S.No.....of 2008.

2. The respondents filed the suit for recovery of possession and mandatory injunction. After contest, the suit was decreed on 28.03.2002. Aggrieved over the Judgment and Decree, the petitioner preferred an appeal before the Subordinate Court, Paramakudi on 21.11.2005. The appeal papers were returned for compliance of certain defects and it was represented with a delay of 956 days and that application was dismissed by the learned Subordinate Judge, Paramakudi. Aggrieved against the above said order, the present revision is filed.

3. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

4. The learned counsel appearing for the petitioner would submit that the petitioner is the defendant in the suit and she should be given an opportunity to prosecute the appeal. The learned counsel would further submit that the appeal was not filed in time, but, the appeal papers were returned for compliance of certain defects and it was represented with a delay of 956 days in representing the appeal papers. However, the Lower Appellate Court



dismissed the application on the ground that the decree was already executed. The learned counsel would further submit that even after execution of the decree, the petitioner can be permitted to prosecute the appeal.

5. It is seen that the respondent filed the suit against the petitioner in the year 1999 and the suit was decreed in the year 2002. Though the petitioner filed an appeal on 21.11.2005, the appeal papers were represented on 19.08.2008, which is not in dispute. In the meanwhile, the plaintiff/decreed holder executed the decree.

6. It is settled law that by condoning the delay, the settled possession need not be unsettled. The conduct of the petitioner lacks bonafides and she was not vigilant in prosecuting the appeal.

7. Considering the above facts, I do not find any reason to interfere with the order passed by the learned Subordinate Judge, Paramakudi and hence, this civil revision petition is dismissed. No costs.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To
The Subordinate Judge, Paramakudi.

+1 cc to M/s.Babu Rajendran, Advocate in SR.No.27955

pmu/ns
CSL/NGM-MP/28.06.2016 :2p/3c

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