

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.SUNDAR

C.R.P.No.1060 of 2017
and CMP.No.5110 of 2017

R.Dharmalingam

.. Petitioner

vs.

1.K.Srinivasan
2.S.Jothiswaran
3.Indirani

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 11.11.2016 made in I.A.No.1592 of 2015 in O.S.No.1087 of 2007 on the file of Principal District Munsif Court, Salem.

For Petitioner : M/s.S.Jayaseelan

For respondents : Mr.V.Bhiman for
Ms.Rugan and Arya

ORDER

Lone plaintiff in the Trial Court is the revision petitioner before this Court. Defendants 1 and 2 in the suit are the respondents 1 and 2 before this

Court. 2nd defendant S.Jotheeswaran died and the 3rd respondent before this Court viz., Indirani was sought to be brought on record as his legal representative .

2. The parties herein are referred to by their respective ranks in the suit in the Trial Court, for the sake of convenience and clarity.

3. Plaintiff filed the above suit for bare injunction qua possession of the suit property.

4. It is not in dispute that the second defendant in the suit one S.Jotheeswaran died, pending suit on 22.12.2013. A petition to bring on record the legal heir of the deceased Jotheeswaran viz., his wife Indirani was filed belatedly. There was a delay of 245 days in filing the said petition. Therefore, the plaintiff took out an application in I.A.No.1592 of 2015 in O.S.No.1087 of 2007 under Section 5 of the Limitation Act with a prayer to condone the delay of 245 days.

5. It was opposed by the first defendant who would state that the delay is unexplained.

6. On such rival contentions, the Trial Court vide order dated 11.11.2016 dismissed the delay condonation petition. The delay condonation petition was dismissed primarily on two grounds. One is that the plaintiff did not take steps as early as possible, though they were aware of the legal heirs of the deceased second defendant and the other ground is that every days delay has not been explained satisfactorily.

7. On a perusal of the order, I am unable to accept both the grounds on which, the delay condonation application has been dismissed. The reasons are as set out infra.

8. Regarding the first reason, it amounts to begging the question as the delay condonation petition became necessary only owing to plaintiff not taking steps at the earliest.

9. With regard to the second ground, law has developed so much that the theory of explaining every days delay in a petition under Section 5 of the Limitation Act is not now relevant in matters of this nature where it is to bring on record the legal heir of a deceased party to the suit, when the suit itself is pending.

10. It is also seen that no prejudice or hardship would be caused to the first defendant, if the legal heir of the deceased second defendant viz., Jotheeswaran, is brought on record and made a party defendant to the suit. On the contrary it will only ensure effective and complete adjudication of his lis between the parties.

11. Owing to all that have been stated supra, I have no hesitation whatsoever in setting aside the order of the Trial Court dated 11.11.2016 which has been called in question before me.

12. The said order is set aside and this civil revision petition is allowed.

13. Now that the Civil Revision Petition has been allowed, it is for the Trial Court to take up the application to bring the legal heir on record deal with the same on merits and thereafter proceed with the suit.

14. It is seen that the suit is of the year 2007 and therefore, it is a decade. Suit is for bare injunction. Therefore, this is a fit case for giving directions to the Trial Court to dispose of the suit as early as possible.

15. The Trial Court is directed to dispose of the suit viz., O.S.No.1087 of 2007 as early as possible and in any event, within six months from the date of receipt of a copy of this order.

16. Civil Revision Petition is allowed and directions supra are given in addition thereto. No costs. Consequently, connected miscellaneous petition is closed.

04.04.2017

kkd
Index:Yes/No
Internet:Yes/No

To
The Principal District Munsif Court,
Salem.

M.SUNDAR,J

kkd

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