

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.4621 of 2011
and
CMP.No.1 of 2011**

Rathinamma

.. Petitioner

Vs.

- 1.Venkataramanappa
- 2.Munivenkatappa
- 3.Ramappa
- 4.Narayanappa (Deceased)
- 5.Venkatamma
- 6.Padma
- 7.Minor Munirathna
- 8.Sarasamma
- 9.Viswanath
- 10.Minor Anusuya
- 11.N.Subramani
- 12.Srinivasmurthy alias Ravi
- 13.N.Gayathiri alias Rani
- 14.N.Manjunath

.. Respondents

(R11 to R14 brought on records as LR's of
the deceased R4 vide order of Court
dated 13.06.2013 made in M.P.No.1 of 2013
in CRP(NPD).No.4621 of 2011)

Prayer: Civil Revision Petition filed under Section 115 of the Civil

Procedure Code, against the Fair and Decreetal orders of the learned Subordinate Judge, Hosur, dated 28.07.2011 in I.A.No.82 of 2008 in A.S.No.28 of 1997.

For Petitioner : Mr.V.Nicholas

For Respondents : Mr.V.Raghavachari (for R2 and R4)

Mr.M.Guruprasad (for R5 to R10)

Mr.V.Lakshminarayanan (for R11 to R14)

R1 and R3 – Not Ready Notice

ORDER

The appellant in the above appeal suit in A.S.No.28 of 1997 is the revision petitioner. The factual matrix of the case of the revision petitioner is that she has filed a Suit for Declaration and Permanent Injunction in O.S.No.339 of 1982 in respect of the suit scheduled property as against her husband's brothers before the District Munsif Court, Hosur. According to the revision petitioner, her husband's brothers declined her title and made an attempt to defeat her right over the suit schedule property which was exclusively gifted to her by her father-in-law. Therefore she filed the above suit against her husband's brothers for declaration and permanent Injunction in respect

of suit schedule property. However, the Trial Judge on misconception of law and facts has dismissed the above suit, aggrieved over which the revision petitioner has filed first appeal in A.S.No.28 of 1997 on the file of the learned Subordinate Judge, Hosur. The appeal was filed well within time and was taken on file by the Lower Appellate Court.

2. Being so, the listing of the appeal suit for hearing was neither intimated to the revision petitioner nor was called by her Counsel engaged before the Lower Appellate Court to conduct the appeal. In the meantime the defendants in the suit i.e brothers of the revision petitioner's husband have promised to allot her with suit schedule property, which was gifted by her father-in-law. Thereupon the revision petitioner has not pursued the appeal for all these years. That apart she was also affected by Tuberculosis, for which she had undergone treatment in Bangalore.

3. In the above factual background, the respondents started troubling the revision petitioner's dealing with the suit property in one way or in another. In the mean time on 11.12.2006 after strenuous efforts made by the revision petitioner, it was unfortunate for her to find that the above appeal suit came to be dismissed for non

prosecution as early as on 17.11.1998. Whereupon the revision petitioner filed an application under Order 9, Rule 9 CPC to restore her appeal, since the same was filed beyond the prescribed limitation, the same was supported by an Interlocutory Application in I.A.No.82 of 2008 under Section 5 of the Limitation Act, to condone the delay of 2949 days caused in filing the above restoration application. But the learned trial Judge without appraisal of the facts that the non prosecution was neither willful nor wanton, but because of the aforesaid bonafide reasons has erroneously dismissed I.A.No.82 of 2008. The said order of dismissal is impugned herein.

4.I heard Mr.V.Nicholas, learned counsel appearing for the petitioner and Mr.V.Raghavachari, learned counsel appearing for the respondents 2 and 4 and Mr.M.Guruprasad, learned counsel appearing for the respondents 5 to 10 and Mr.V.Lakshminarayanan, learned counsel appearing for the respondents 11 to 14 and perused the entire records.

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5.The learned counsel for the revision petitioner would submit the revision petitioner was uninformed by her counsel regarding the dates and events of hearing in the appeal suit. Since in the meantime

the respondents promised to allot her with suit schedule property, the revision petitioner has not pursued the appeal all these years. In addition to the reasons stated above, the revision petitioner was affected by Tuberculosis, for which she had undergone treatment at Bangalore. Only because of cause stated supra, she was not in a position to conduct the case. The same is neither willful nor wanton. However, the learned First Appellate Judge failed to appraise the same and thereby dismissed the revision petitioner's application in mechanical approach, which is warranted interference by this Court.

6.Per contra, the learned counsel for the respondents submitted that the reasons assigned by the revision petitioner for the delay caused is utter false and the same cannot be accepted to condone the inordinate delay of 2949 days. The Medical ground raised by the revision petitioner is out rightly liable to be rejected, since the same was unsupported by any Medical Records. Moreover the blame of the revision petitioner as if she was assured by the respondents and that her counsel failed to communicate were fanciful stories invented for the purpose of filing the application on hand. The revision petitioner is duty bound to explain each and every day delay caused in filing the application, whereas on his failure to do so, the learned Appellate

Judge has rightly dismissed the revision petitioner's application in I.A.No.82 of 2008.

7.Hearing upon the rival submissions and on perusal of the records, it is noticeable that the revision petitioner has sought for condonation of inordinate delay of 9 years caused in filing the above application to restore her appeal which was dismissed for non-prosecution on 17.11.1998. It is further noticed that there are three reasons assigned for such delay caused viz.,

- i) failure on the part of her counsel to intimate the hearing date and proceedings of the Court,
- ii) she was affected by Tuberculosis and undergone treatment at Bangalore and
- iii) she was assured by respondents that she would be allotted with suit schedule property.

8.In so far as the reason put forth by the revision petitioner in serial No.2 on Medical ground, the records disclose that there was no medical record produced by the revision petitioner before the Court to substantiate her claim of illness. Hence the same can't be accepted.

9. In so far as the reasons stated in serial Nos.1 and 3, it is needless to say that the revision petitioner being the appellant is duty bound and should have due diligence to conduct her appeal. Whereas in the case on hand by merely and lamely blaming her counsel, as well as blaming the opponent party to the litigation, the revision petitioner after about 9 years has come up with an application without any valid and bonafide reasons to substantiate the delay caused. It would be noteworthy that the revision petitioner has averred in her affidavit filed in I.A.No.82 of 2008 that she has not pursued the appeal on the basis of the promise of the respondents.

10. Furthermore it is the duty of the litigants to update their case status at frequent time intervals with their Counsels, but the revision petitioner having remained silent for nine years, now can neither blame her counsel nor the respondents for her omission. Moreover such attitude of the revision petitioner is inadmissible. It is a settled principle of law that length of delay is immaterial, but cogent and convincing reason must be assigned. In this case, there is no sufficient reason assigned by the revision petitioner to condone the delay of 2949 days.

11. At this juncture it would be relevant to emphasize the Legam Maxim ***VIGILANTIBUS NON DORMIENTIBUS JURA SUBVENIUNT***, that the Law will assist only persons, who are vigilant and will not assist those who are careless of their rights. Only those persons, who are watchful and careful is entitled to the benefits of Law.

12. In view of the discussion made above, this Court finds no sufficient and reliable cause put forth by the revision petitioner to condone the delay of 9 years in filing the above application for restoration of Appeal Suit. Therefore the order of the Lower Appellate Court is perfectly correct and deserves no interference by this Court. Hence the civil revision petition stands dismissed. However, there will be no order as to cost. Consequently, connected miscellaneous petition is closed.

07.02.2017

Note: Issue order copy on 08.09.2017

Index: Yes

Internet: Yes

vs

To

The Subordinate Judge, Hosur.

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M.V.MURALIDARAN, J.

VS



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