

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.1874 of 2009

1.Lakshmanan
2.Shivaprakash
3.Renugadevi

.. Petitioners

Vs.

1.Avinashippa Gounder
2.Nachathal
3.Gurusamy
4.Devanayaki

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the fair and final order dated 13.02.2009 passed in I.A.No.53 of 2008 in CFR.No.2781 of 2008 on the file of the learned Sub-Ordinate Judge, Dharapuram.

For Petitioners : Mr.S.K.Rakhunathan

For Respondents : No Appearance

ORDER

The petitioner herein by way of this Civil Revision Petition seeks to set aside the fair and final order dated 13.02.2009 passed in I.A.No.53 of 2008 in CFR.No.2781 of 2008 by the Learned Subordinate Judge, Dharapuram.

2.The case of the petitioner is that the 1st petitioner's wife and mother of the second and third petitioner namely Balamani suffered Decree in O.S.No.146 of 2003 vide decree dated 30.04.2004. The said Balamani was pursued the suit proceedings. The suit was contested by the said Balamani as being the 5th defendant in the above suit in O.S.No.146 of 2003 filed by the 1st respondent for Declaration and Injunction.

3.Whereas the said Balamani said to have died in the mean time and according to the petitioners, they were unable to trace any documents pertaining to the suit or to know the actual position of case.

4.In the said factual backdrop the petitioner's claiming that the Decree in O.S.No.146 of 2003 stood traced while in search of other documents, disclosing that the Suit ended against them.

5. On coming to know the same, the petitioners filed the above appeal suit along with an application in I.A.No.53 of 2008 under Section 5 of the Limitation Act to condone the delay of 1366 days. However the Learned Judge holding that the application is made belatedly with a huge delay and the reason adduced to condone the delay is also not sufficient and thereby rejected the petitioner's application. The said order is under challenge herein.

6. I heard Mr.S.K.Rakhunathan, learned counsel for the petitioners and perused the entire materials available on record. There is no representation made on behalf of the respondents.

7. On the perusal of the impugned order, it is seen that the petitioner's application came to be dismissed on ground that reason assigned to condone the delay of 1366 days is unacceptable and untrue. It is also held by the Trial Court that the appeal was not preferred in time.

8. It is the case of the petitioners that when they were re-arranging the old documents and records on 30.02.2008, they found the Judgment and Decree copy of O.S.No.146 of 2003. There can be

no doubt that the petitioners as legal heirs of deceased Balamani are entitled to proceed with the suit proceeding left as such by Balamani. Admittedly Balamani has died and it is not in dispute.

9.It would be noteworthy to state that the suit is for declaration of title and consequential injunction on the strength of Declaration of Title. The Title is alleged to have derived by adverse possession by the 1st respondent herein. The deceased Balamani is found to be the 5th defendant in the above suit. Our High Court and the Hon'ble Supreme Court has repeatedly held that length of delay is immaterial, but sufficient reason must be assigned. Further while considering the delay application, the Courts should consider substantial justice is done to the parties.

10.Considering the nature of suit claim and the case of the petitioners, I am inclined to allow this Civil Revision Petition by setting aside the impugned order in view of the fact that a valuable right of First appeal, where the parties are entitled to agitate factual aspects are to be had, however as to payment of cost by the petitioners.

11.In the result:

(a) this Civil revision Petition is allowed by setting aside the order passed in I.A.No.53 of 2008 in CFR.No.2781 of 2008, dated 13.02.2009 on the file of the learned Subordinate Judge, Dharapuram, on condition that the petitioner/appellant should pay a sum of Rs.50,000/- to the Government Hospital of Thoracic Medicine, Thoppur, Madurai within a period of four weeks from the date of receipt of a copy of this order, by way of Demand Draft in favour of *"The Resident Medical Officer, Government Hospital of Thoracic Medicine, Thoppur, Madurai"*.

(b) on production of the payment receipt and the Xerox copy of the Demand Draft, the learned Subordinate Judge, Dharapuram, is hereby directed to number the appeal and to dispose the same within a period of three months thereafter, on giving notice to both the parties. No costs.

सत्यमेव जयते

19.04.2017

vs

Note: Issue order copy on 28.01.2019

Index: Yes

Internet: Yes

To

The Subordinate Judge, Dharapuram.

WEB COPY

M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.1874 of 2009

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