

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.150 of 2012

1.Sengodapandaram @ Subbu
2.Natesan
3.M.Muthusami
4.M.Thangavel

.. Petitioners

Vs.

1.The Special Deputy Collector,
Revenue Court, Trichy.
2.The Executive Officer,
Sri Arulmighu Kariyakaliamman Temple,
Mylampadi

3.Sadayan

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the order and decree dated 29.08.2011 made in I.A.No.371 of 2008 in Un-numbered C.R.P.No. Nil/2008, on the file of the Principal District Judge of Erode.

For Petitioners : Mr.A.Gouthaman
For R1 & R3 : Not ready in notice
For R2 : Mr.T.Dhanyakumar

ORDER

This civil revision petition has been filed to set aside the order and decree dated 29.08.2011 made in I.A.No.371 of 2008 in Un-numbered C.R.P.No. Nil/2008, on the file of the Principal District Judge of Erode.

2. The petitioners filed I.A.No.371 of 2009 to condone the delay of 1979 days in filing the revision against the order dated 20.03.2003 in N.Ma.No.206 of 2000 and its further proceedings therein by the first respondent.

3. According to the petitioners, their ancestors are poosaris of Sri Arulmighu Kariyakaliamman Temple, Mulampadi and the Maharaja of Mysore granted the land in question to them. The petitioners, as descendants of their ancestors are in possession and enjoyment of the suit property and there is no landlord – tenant relationship between the second respondent and the petitioners. The second respondent filed petition before the first respondent for evicting the petitioners from the suit property and without issuing any notice, the first respondent passed an order of eviction on

20.03.2003 against the petitioners. The petitioners filed O.S.No.126 of 2004 on the file of Sub-Court, Bhavani praying for declaration declaring the rights of the petitioners for the service of conducting poojas and administrative affairs of the temple. The said suit is pending questioning the authorities and the action taken by the second respondent/ Executive Officer to disturb the possession by blanket order of the first respondent/revenue court. The second respondent filed written statement and is contesting the suit and the said suit is pending. If eviction order is enforced, they will be put to irreparable loss and hardship and there is no limitation period in the Tamil Nadu Public Trust (Regulation of Administration of Agricultural lands) Act for filing the revision. The delay on 1979 days is beyond their control and the first respondent has passed the order without proper service of notice to the petitioners and prayed for allowing the application to condone delay.

4. The second respondent filed counter in the application and submitted that the petitioners or their ancestors are not hereditary poojaries and they have not renovated the temple and have not conducted Kumbabishegam. They were aware of the eviction

proceedings much earlier. Eviction was ordered after due notice. The suit filed by the petitioners for declaration was dismissed on 17.08.2009 and they have not given any valid reason for condoning such huge delay and prayed for dismissal of the application.

5. Before the learned Judge, the first petitioner was examined as P.W.1 and marked four documents as Exs.P1 to P4. Respondents examined one Kanagaraj and marked eight documents as Exs.R1 to R8.

6. The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record, dismissed the application holding that the petitioners have not given sufficient reason to condone the delay.

7. Against the said order dated 29.08.2011 made in I.A.No.371 of 2008 in Un-numbered C.R.P.No. Nil/2008, the present Civil Revision Petition has been filed.

8. The learned counsel for the petitioners reiterated the averments in the affidavit filed in support of the above application

and contention raised in the grounds of revision. According to the learned counsel for the petitioner, the learned Judge failed to consider the pendency of the suit in O.S.No.126 of 2004 wherein the rights of petitioners over the suit property is to be declared. The learned Judge failed to appreciate the ratio in the judgment reported in **2006 (4) CTC 666 [Ramachandran S v. The Special Commissioner and Commissioner for Land Administration]** and erroneously dismissed the application to condone the delay. The learned Judge failed to see that number of days in filing the petition is immaterial and only the reason given by the parties has to be considered. The learned counsel for the petitioners further submitted that petitioners are also prosecuting the case before Sub Court, Bhavani and time during which suit was pending must be excluded.

9. The learned counsel appearing for the petitioners, in support of his contention relied on the following judgments -

(i) 2011 (4) MLJ 851 (SC) "Coal India Limited and Another Vs. Ujjal Transport Agency and Others"

"The period of time spent before a wrong

forum in filing of application for setting aside an award under Section 34 of the Arbitration and Conciliation Act, 1996 can be excluded for the purposes of period of limitation, if the bonafides and due diligence in pursuing their remedy before such wrong forum is established”.

(ii) 2016 (5) CTC 92 [K.Chandralekha v. S.Ravikumar]

27. I have already pointed out that the present suit is not a suit simply challenging the sale deeds alone but also for seeking other reliefs namely, a direction against the 21st defendant namely D.R.O, and also for mandatory and permanent injunction against other defendants. It is the specific case of the plaintiff that he is still in possession and enjoyment of the property with which, the defendants are trying to interfere. When such being the reliefs sought for in the suit, I do not think that the learned senior counsel for the appellant is justified in contending the relief sought for before the revenue authorities and the present suit is not one and the same. When several reliefs are sought for in a suit and some of those reliefs are identical with the relief sought in some other proceedings, certainly, shelter under Section 14 of the Limitation Act can be taken by the plaintiff. In fact in a decision reported in 2000(5) SCC 355 (*P.Sarathy vs. State Bank of India*), the Honourable Apex Court, while considering the scope of Section 14(1) of the Limitation Act has observed that it is not necessary that the 'Court' spoken of in Section 14 should be a civil court and any authority or Tribunal having the trapping of a court would be a Court within the meaning of such Section. Even otherwise the question as to whether the proceedings initiated before the revenue authorities would come under the purview of Section 14 of Limitation Act and whether based on such proceedings, the plaintiff could seek for exclusion of period so as to bring the suit within the period of

limitation are all questions which are to be left to be taken along with other issues and decided after full fledged trial. Under the guise of considering the application under Order 7 Rule 11 CPC, a mini trial within regular trial cannot be conducted.

10. The learned counsel appearing for the second respondent submitted that the petitioners have not given any valid reason for condoning the delay. Pendency of the suit is not sufficient ground for condoning the delay. The suit filed by the petitioners for declaration was dismissed on 17.08.2009 and prayed for dismissal of the revision petition.

11. Heard the learned counsel for the petitioners as well as second respondent and perused the materials available on record and judgments relied on by the counsel for the petitioners.

12. The contention of the learned counsel for the petitioners is that they were prosecuting their right before Sub Court, Bhavani by filing O.S.No.126 of 2004 for declaration and therefore the delay has to be condoned and the first respondent has passed the order without issuing proper notice to them. These contentions of the learned counsel for the petitioners are untenable. The second

respondent has marked Ex.R8, paper publication effected in the proceedings before the first respondent and only after due service, the first respondent has passed the order on 20.03.2003. Further, from Ex.R6 & R7, xerox copies of the judgment and decree passed in O.S.No.126 of 2004 before Sub Court, Bhavani, it is seen that the suit filed by the petitioners was dismissed on 17.08.2009.

13. From the materials on record, it is seen that even during the pendency of the suit, the petitioners have filed CRP before the Principal District Court, Erode and present I.A.No.371 of 2008 to condone the delay, on 17.11.2008. From this, it is clear that the first respondent has passed the order after due service of notice to the petitioners. The petitioners have filed the present petition to condone the delay even when the suit filed by them was pending before Sub-Court, Bhavani. Further the learned counsel for the petitioners contended that they have filed application to restore the suit. In view of the above facts, the judgments relied on by the learned counsel for the petitioners are not applicable to the facts the present case.

14. It is well settled that the application for condoning the

delay must be considered liberally and length of delay is not a criteria. The intention of the parties must be bonafide and should not be malafide. In the present case, the petitioners have not given valid and sufficient reason to condone the delay. The learned Trial Judge has rightly dismissed the application, by giving cogent and valid reason. I do not find any irregularity or illegality in the order passed by the learned Trial Judge, warranting interference by this Court.

15. In the result, the Civil Revision Petition is dismissed. No costs.

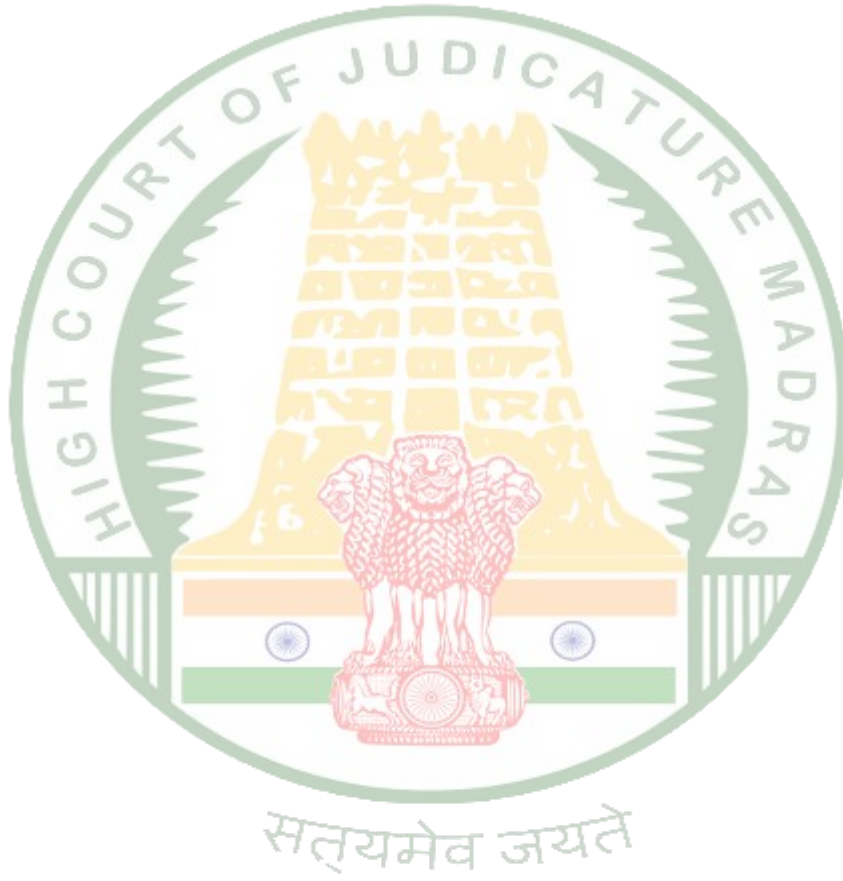
28.08.2017

klt/rgr
Index: Yes/No

To

1.The Principal District Judge,
Erode.

2.The Special Deputy Collector,
Revenue Court,
Trichy.



WEB COPY

V.M.VELUMANI, J.

klt/rgr



C.R.P.(NPD) No.150 of 2012

28.08.2017

WEB COPY