

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.2002 of 2012

1.P.Subramaniam

2.S.Shanmugam

3.P.Murugan

4.S.Maheshwari

5.M.Sellammal

.. Petitioners

Vs.

P.Sarasu

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 19.07.2011 made in I.A.No.266 of 2010 in O.S.No.14 of 2008 on the file of the Principal District Munsif Court, Bhavani.

For Petitioners : Mr.T.Murugamanickam

For Respondent : Mr.V.S.Kesavan

ORDER

This revision petition is directed against the Fair and Decreetal Order dated 19.07.2011 made in I.A.No.226 of 2010 in O.S.No.14 of 2008 on the file of the learned District Munsif Court, Bhavani.

2.The petitioners herein are the defendants in the above suit filed by the respondent herein seeking for Permanent Injunction restraining the revision petitioners from in any manner disturbing the respondent's possession over the suit schedule property.

3.According to the respondent, she is the absolute owner of the suit property and excepting her nobody has any interest or title over the same. More so, it is also her case that there is a common ridge belonging to herself and the revision petitioners present in ground such that dividing their lands.

4.Whereas there developed a dispute with regard to common ridge between herself and the revision petitioner and out of same the respondent/plaintiff faced threat of trespass and dispossession and consequently filed the above suit for injunction.

5. In the above suit the revision petitioners failed to appear and defend the suit and accordingly due to non appearance, the petitioners were set ex-parte and an ex-parte decree came to be passed on 24.03.2009.

6. While so, the revision petitioners filed an Interlocutory application to set aside the ex-parte decree and since there was a delay of 228 days beyond statutory limitation, the said application to set aside the ex-parte decree was supported by a section 5 application under the Limitation Act vide I.A.No.266 of 2010 seeking condonation of the delay incurred.

7. More so, the revision petitioners also filed their written statement proposed to be laid before the Trial Court in case of condoning the delay.

8. The application in I.A.No.266 of 2010 is found resisted by the respondent that the reason projected by the revision petitioners is untrue. Further it is the respondent's contention that revision petitioners were very well available before the revenue Court and have

taken part in the revenue Court proceedings in the contemporary period of alleged illness.

9.The Learned Trial Judge on appraisal of documentary evidence dismissed the revision petitioner's application holding that the revision petitioners have failed to establish their illness, through the impugned order dated 19.07.2011 and the same is under challenge in this Civil Revision Petition.

10.I heard Mr.T.Murugamanickam, learned counsel for the petitioners and Mr.V.S.Kesavan, learned counsel for the respondent and perused the entire materials available on record.

11.On perusal of the suit records, it is obvious to see from plaint averments that according to the plaintiff, there is a common ridge belonging to the plaintiff and defendants. However it is seen that it is the case of the revision petitioners that the ridge is not a common one, but is the exclusive property of the revision petitioners. The revision petitioners also dispute the title and alleged possession claimed by the respondent.

12.At this juncture, on close perusal of plaint the relief sought remains claiming for bare Injunction alone without any claim to declare her title.

13.Therefore, in the light of title dispute involved in the suit, I am of the considered view that one more chance can be given to the revision petitioners to defend the suit, as only a contested Decree will do substantial justice to either parties.

14.Again it is needless to say that a delay condonation petition has to be construed in a liberal and pragmatic manner to see justice is done to the parties.

15.In the result:

a) This civil revision petition is allowed by setting aside the order passed in I.A.No.226 of 2010 in O.S.No.14 of 2008 dated 19.07.2011, on the file of the learned District Munsif Court, Bhavani, on condition that the petitioners should pay a sum of Rs.15,000/- to the respondent/plaintiff within a period of four weeks from the date of receipt of a copy of this order;

b) on production of the payment receipt, the trial Court is directed to number the set aside application, filed under Order 9 Rule 13 of CPC and to dispose the same, by giving notice to both parties within a period of one month;

c) On the passing orders in the set aside application, the trial Court is directed to take up the suit on day to day basis, without giving any adjournment to either party and dispose of the suit within a period of two months. Both the parties are hereby directed to give their fullest cooperation for early disposal of the suit.

26.04.2017

Index:Yes

Internet:Yes

Note:Issue order copy on 24.12.2018

vs

To

The Principal District Munsif Court,
Bhavani.

WEB COPY

M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)No.2002 of 2012**

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