

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) No.2179 of 2013

Govindhan : Petitioner

versus

1.Chinnapaiyan

2.Pullaiyanan

3.Shanmugham

4.Radha

5.Chinnaponnu

: Respondents

PRAYER: Revision filed against the order dated 14.3.2013, in I.A.No.1158 of 2012 in O.S.No.132 of 2007 on the file of the District Munsif Court, Mettur.

For petitioner :: Mr.R.Prabhakaran

For respondents :: Mr.D.Sivakumar

ORDER

The application filed by the petitioner under section 5 of the Limitation Act to condone the delay of 185 days in filing the interlocutory application to restore the suit was dismissed by the learned District Munsif, Mettur. The said order is under challenge in this civil revision petition.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The petitioner filed a suit for injunction against the respondent in O.S.No.132 of 2007. The suit was contested by the respondent by filing written statement.

4. The petitioner failed to appear before the Trial Court and resultantly, the suit was dismissed for default. Thereafter, the petitioner filed an application in I.A.No.1158 of 2012 invoking Section 5 of the Limitation Act.

5. Before the Trial Court, the petitioner contended that he was suffering from chikungunya and as such, he could not instruct the counsel to appear on his behalf. Since the details of the illness were not furnished by the petitioner, the trial Court dismissed the application.

6. After hearing the learned counsel for the parties and on considering the background facts, I consider it deem and fit to condone the delay. This is more on account of the fact that both the petitioner and the respondents claim that they are in possession of poromboke land. The issue regarding possession of the poromboke land has to be decided one way or the other. In case the present suit is not restored, then the respondents would be denied of an opportunity to substantiate their case regarding possession.

7. In the result, the order dated 14 March 2013 is set aside. The application in I.A.No.1158 of 2012 is allowed subject to the condition that the petitioner shall pay a sum of Rs.2,000/- (Rupees Two thousand only) as cost to the respondents. The cost shall be paid within a period of four weeks from the date of receipt of a copy of this order, failing which, the application in I.A.No.1158 of 2012 would be dismissed without any further reference to this court.

8. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, M.P.No.1 of 2013 is closed.

04.04.2017

Index:Yes/no
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To
The District Munsif Court, Mettur

K.K.SASIDHARAN, J.

(tar)

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