

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.2731 of 2012

Kumaran @ Kumarasami

.. Petitioner

Vs.

1.Murugesan

2.Gowri

3.Elumalai

4.Venkatesan

5.Kuppammal

6.Renummal

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal orders dated 15.07.2011 passed in I.A.No.5 of 2007 in A.S.No.Nil of 2007, on the file of the Sub-Court, Ranipet.

For Petitioner : Mr.P.Mani

For Respondents : No Appearance

ORDER

The petitioner has filed this Civil Revision Petition to set aside the Order and Decree passed in I.A.No.5 of 2007 dated 15.07.2011 in A.S.No. Nil of 2007 by the Sub-Court, Ranipet.

2.The 1st respondent herein and wife of the 2nd respondent herein namely Punniyakoti filed a suit in O.S.No.17 of 1994 on the file of the Sub Court, Ranipet for the relief of partition and claiming 14/35 shares in the suit properties and restraining the 3rd defendant from putting up any new construction in the schedule mentioned property item No.1. The said suit was decreed and Preliminary Decree was passed on 08.06.2007. As against that the petitioner herein has preferred an appeal suit along with condone delay application in I.A.No.5 of 2007 with a delay of 565 days. The reason for delay stated by the petitioner herein that for him and respondents 3, 4 and 5 herein engaged a counsel in the Lower Court and conducted the suit. The 3rd respondent herein, who is the 1st defendant in the suit who was in charge of the case and he conducted the case on behalf of the petitioner herein also. The 3rd respondent herein gave evidence in the Lower Court on behalf of the petitioner herein also. After giving evidence, there was a strained relationship between the petitioner

herein and other brother in the domestic affairs.

3.The revision petitioner was kept in darkness about the verdict and as well as the legal proceedings. He was keeping the secret about the result of the suit. He has obtained certified copies of the Judgment and Decree belatedly. First defendant handed over the copy of decree alone to the petitioner herein. Then only the petitioner herein came to know that the Lower Court has granted $\frac{1}{2}$ shares in favour of the plaintiff. After getting the decree copy from the petitioner's brother, the petitioner applied for Judgment copy which was handed over to the petitioner's counsel on 14.11.2006 by Lower Court. The petitioner's brother was in charge of the case has colluded with the plaintiff, thus preventing the petitioner to file the appeal in time. Hence, there is a delay of 565 days in preferring the appeal. The petitioner herein contended that the reason for delay is neither willful nor wanton.

4.The respondents 3 and 4 in the condone delay application filed a counter contending the petitioner herein intentionally and deliberately did not come forward to file appeal in time. There is no reason assigned by the petitioner herein to condone the huge delay of 565 days and the reason assigned by the petitioner herein is not

acceptable and the petition deserves to be dismissed.

5.After the perusal of the records and upon hearing the arguments on both side, the Learned Judge dismissed the condone delay application by order and decree dated 15.07.2011. As against that the petitioner herein has filed the present civil revision petition.

6.I have carefully perused the records and heard the arguments of Mr.P.Mani, learned counsel for the petitioner. There is no representation for the respondent. The petitioner has filed the appeal suit with a delay of 565 days was dismissed by the lower court. Against which the present civil revision petition is filed.

7.The brother of the revision petitioner, the 3rd respondent herein conducted the suit himself and on behalf of the petitioner herein also. After passing the Preliminary decree the 3rd respondent herein did not inform to petitioner and colluded with the 1st respondent herein/ plaintiff.

8.While considering the delay petition, liberal approach has to be shown by the lower courts to meet the end of justice. In the

present case on hand, the revision petitioner has assigned the reason for filing the first appeal with a delay that his brother, who is the 1st defendant in the suit was taking care of the case on behalf of his brothers. Therefore, the 1st defendant deliberately obtained the decree copy only that too with a delay. Thereafter only the revision petitioner has applied for certified copy of Judgment and the same was made ready on 14.11.2006. In that process, the delay has occurred.

9.It is a settled proposition of law that the length of delay is immaterial, but cogent and convincing reason must be assigned. In this case, the reason assigned by the revision petitioner is acceptable one. In order to give an opportunity, the delay of 565 days is to be condoned, otherwise the revision petitioner will lose his right to file statutory appeal suit. By allowing this civil revision petition no prejudice would be caused to the respondents herein. For rendering substantial Justice and to meet the ends of Justice, this civil revision petition is to be allowed by awarding cost of Rs.3,000/-.

10.In the result:

a) this Civil Revision Petition is allowed and the order

and decree made in I.A.No.5 of 2007 in A.S.No. Nil of 2007 dated 15.07.2011 on the file of the Sub-Court, Ranipet is set aside on condition that the petitioner shall pay a sum of Rs.3,000/- towards cost to be paid to the State Legal Services Authority attached to this court within a period of two weeks from the date of receipt of copy of this order;

b) Considering the fact that the first appeal was filed in the year 2007, the Learned Subordinate Judge, Ranipet is directed to number the appeal suit and dispose of the same within a period of 6 months from the date of receipt of copy of this order. No cost.

11.01.2017

Index:Yes/No
Internet:Yes/No

vs

To

The Sub-Court,
Ranipet.

M.V.MURALIDARAN, J.

VS

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