

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.03.2017

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

CRP (PD).No.4517 of 2012

and

M.P.No.1 of 2012

Thyagarajan

.. Petitioner

Vs

P.Gopalakrishnan

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order and decree dated 03.11.2011 passed in I.A.No.355 of 2011 in O.S.No.551 of 2007 on the file of the District Munsif, Tiruppur.

For Petitioner :Mr.D.J.Venkatesan

For Respondent :Mrs.Bhavani Subbarayan
for M/s.Royan Law Associates

ORDER

This revision is at the instance of the second defendant in O.S.No.551 of 2007 on the file of the learned District Munsif, Tiruppur, as against the orders passed in I.A.No.355 of 2011.

2.The plaintiff/respondent, instituted the suit based on title seeking declaration as to the suit property situate in a place in Tiruppur and for consequential injunction as against defendants 1 and 2. The first

defendant remained ex-parte. The second defendant filed written statement resisting the claim, contending that he had purchased the suit property from the first defendant and he is having title to the suit property. Issues were framed. Suit was put on trial. It was posted in the special list on 01.06.2010. Since the defendants did not appear, they were set ex-parte and an ex-parte decree was passed.

3. To set-aside the ex-parte decree, the second defendant filed I.A.No.355 of 2011, stating that basically he is a Drugist, he has to travel a lot in connection with his medicine business and he has become a troubled man mentally and physically and he used to see his lawyer occasionally, due to the time gap, he could not get information on developments in the suit.

4. The plaintiff filed counter opposing the application tooth and nail.

5. Upon hearing both sides, the Trial Court dismissed the petition. Since he did not file any documentary evidence in support of his illness. That is how this revision by the second defendant before this Court.

6. Learned counsel for the revision petitioner would contend that reasons have been adduced and merely on account of non-production of

documents not condoning the delay is not proper. What the revision petitioner sought for is only an opportunity to put forth his case on merits. He is not to drag on the trial of the suit . On the other hand, the learned counsel for the respondent/plaintiff would contend that the revision petitioner has furnished a cock and bull story. The reasons adduced in the affidavit are sheer concoction.

7. The allegations made in the affidavit are unsubstantiated. In the circumstances, the trial court has rightly refused to condone the delay of 231 days.

8. The learned counsel for the respondent further contended that it is incumbent upon the petitioner to show sufficient cause. But, in the present case, no sufficient cause was shown.

9. In this connection, the learned counsel for the respondent cited ***R.B.Ramlingam Vs. R.B.Bhvaneswari [2009 (2) SCC 689]***.

10. I have given my anxious consideration to the rival submissions, perused the impugned order and the materials placed.

11. In this branch of law, there is march of law. Earlier, in a

petition like this filed under Section 5 of Limitation Act, the Court used to view the matter with tinged glasses. They used to count the days and expected explanation for delay of each day. Later, pragmatism prevailed. Courts started considering presence of any cause, case to be adjudicated and whether not giving of an opportunity will result in failure of substantial justice. When the tide is in favour of the petition the Court started condoning the delay and freed itself from the shackles of prior views. However, while adopting such a liberal approach, the Courts will not encourage court birds, vexatious litigants, litigants who takes Court's time for their jolly ride. Now, the attitude of the Court is that it is not the length of delay matters, but substance matters. If there is substantial cause the length of delay and range of delay becomes immaterial if it is a vexatious petition. Even if the delay is too short, courts started dismissing such petition. It depends on facts and circumstances of each case. Also see in *R.B.Ramalingam Vs. R.B.Bhuvaneswari* [2009(2) SCC 689], cited supra.

12. In the present case before us, the plaintiff and the defendants sets up rival title with regard to certain extent of property situated in Tiruppur. Each propounds title deeds of their own. They invites the Court to give its seal of approval for their title to the suit property. The revision petitioner also rests his hope on the first defendant to sustain his title. The

true colour of the coin must be known. That would be through a regular trial. Thus there is substantial scope/case for adjudication. It will have a finality over a contentious issue on a property matter will shuts the mouth of a party to the litigation and it will settle an unsettled issue. When such the position, the trial court having ventured to make a deep research into the illness of the revision petitioner is not necessary.

13.The plaintiff has become a decree holder easily. An opportunity for full scale trial will not be to his liking. Actually, it will be jolt to his resting on his said laurel. Therefore, he will be prejudiced. It can be neutralised not by mulcting the revision petitioner's side by cost but by quickening the process of trial.

14. In view of this foregoings, ordered as under:

- (i) This revision succeeds.
- (ii) The order dated 03.11.2011 passed in I.A.No.355 of 2011 in O.S.No.551 of 2007, by the District Munsif, Tiruppur is set aside.
- (iii) The Trial Court will restore the suit to file.
- (iv) The Trial Court will fix a hearing date.
- (v) The suit shall be disposed of in accordance with law within three months from the said hearing date.
- (vi) Immediately on disposal of the suit, the Trial Court will

submit its completion report to the Registrar (Judicial) of
this Court.

Dr.P.DEVADASS, J.

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15.Accordingly, this Revision is disposed of. Consequently,
connected miscellaneous petition is also closed.

23.03.2017

Index:yes/no
Internet:yes
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To

- 1.The Principal District Judge,
Tiruppur.
2. The District Munsif,
Tiruppur.

Copy to:

- 3.The Registrar (Judicial)
- 4.The Assistant Registrar
(Appellate Side),
High Court, Madras.

C.R.P.(PD).No.4517 of 2012
and
M.P.No.1 of 2012

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