

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2017

CORAM

THE HONOURABLE MR.JUSTICE Dr.P.DEVADASS

CRP (NPD) No.4900 of 2012

Perumal  
... Petitioner

VS

Sambath  
... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order passed in I.A.No.1 of 2010 in A.S.No.NIL of 2010 dated 19.03.2012 on the file of the Subordinate Judge, Ranipet.

For Petitioner : Mr.S.Arunkumar

For Respondent : Mr.T.P.Prabakaran

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**ORDER**

The plaintiff is the revision petitioner.

2. The plaintiff and the defendant are adjacent property owners in Marudhampakkam village in Walajah Taluk in Vellore District. The plaintiff purchased the suit property under a registered sale deed dated 07.03.2005. He alleged that the defendant tried to trespass into the suit property. Under these circumstances, the plaintiff filed the suit seeking

declaration as to his title and also consequential injunction.

3. The suit was resisted by the defendant. After full trial, the suit was dismissed. Aggrieved, the plaintiff has directed the appeal. However, by that time, there was a delay of 332 days. In such circumstances, he has filed I.A.No.1/2010 under Section 5 of Limitation Act to condone the said delay. In the delay condonation petition, the plaintiff has stated various reasons and also pointed out several ailments and this was opposed to by the defendant.

4. The appellate court commented upon the health condition and absence of proof for the native treatment and dismissed the I.A.No.1/2010. That is how the plaintiff is before us.

5. Learned counsel for the revision petitioner would contend that the suit involves a property matter and an opportunity may be given for further adjudication. However, for technical reasons, the opportunity was denied.

6. On the other hand, the learned counsel for the respondent would submit that as there was no proof for the same, the trial court has rightly dismissed the petition.

7. I have considered the rival submissions and perused the materials on record.

8. In a delay condonation petition, explanation for each day of delay is expected. This was the position for a long time. Now there is shift in this stand. The court started thinking whether is there any scope for adjudication, whether an opportunity can be given. But if there is no substance, it is just an attempt to prolong the matter, waste of court's time

at the cost of public time and money, the courts used to dismiss delay condonation petitions. Thus the crux of the matter is substance and not the length of the delay.

9. Now in the case before us, neighbours have property dispute. Each side placed their cards before the court. Findings have been rendered by the trial court. The defeated plaintiff raised several grounds in his memorandum of appeal. He wished to have further adjudication. After deciding the appeal, finality may be reached. Legal errors committed by the trial court can be corrected by this court. Let us not have a pedantic approach. Let us view the matter practically. The trial court concentrated more on the alleged ailments of the plaintiff. This is not a correct approach. In the facts and circumstances, indulgence can be shown to the revision petitioner/plaintiff.

10. Ordered as under:

i) This revision succeeds.

ii) The impugned order passed by the learned Subordinate Judge, Ranipet, in I.A.No.1 of 2010, is set aside.

lii) The said I.A. stand allowed.

iv) Delay is condoned.

v) The learned Subordinate Judge, Ranipet, is directed to process the appeal memorandum and number it, if it is otherwise in order.

gv

06.04.2017

Speaking/Non-speaking order  
Index:Yes/No

**Dr.P.DEVADASS, J.**

gv

To

1. The Principal District Judge,  
Vellore.

2.The Subordinate Judge,  
Ranipet.

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**06.04.2017**