



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P (NPD) (MD) No.817 of 2017

1.T.Yesudhas

2.E.Daniel Barnaba

: Petitioners/Petitioners/Plaintiffs

vs.

T.Sahayam

: Respondent/Respondent/Defendant

Petition filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 15.11.2016 passed in I.A.No.165 of 2016 in O.S.No.302 of 2007 on the file of the Additional District Munsif, Srivilliputhur.

For Petitioner : Mr.N.Rahamadullah

ORDER

The suit filed by the revision petitioner for declaration and injunction in respect of 1½ feet lane, was dismissed for default on 09.07.2012. The application for restoration of the suit was filed with the delay of 1046 days on the ground that earlier when the interlocutory application for amendment was partly allowed by the Trial Court, aggrieved by the disallowed portion, CMA.No.6 of 2014 was filed and pending CMA.No.6 of 2014, the suit was dismissed and after disposal of CMA.No.6 of 2014, the present application for restoration been filed.

2.This application has been contested by the respondent herein, on the ground that when the Trial Court has refused to stay the further proceedings, pending CMA.No.6 of 2014, the plaintiffs/revision petitioners ought to have proceeded with the suit. Instead, they allowed the suit to be dismissed for default and waited till the dismissal of CMA.No.6 of 2014 which was rightly dismissed on 01.06.2015 and thereafter, leisurely filed I.A.No.165 of 2016 to condone the delay of 1046 days in filing the application to set aside the dismissal of suit for default.

3.The explanation for the said delay is neither legal nor sufficient to entertain. The Trial Court therefore, rightly dismissed the application being unsatisfied with the reason stated by the revision petitioner to condone the enormous delay of 1046 days.



4. This Court, in addition to the reasons stated by the Trial Court in the impugned order, also, on considering the prejudice likely to be caused to the respondent, is of the opinion that in a suit for declaration regarding the immovable property, the plaintiffs ought to have been vigilant. Having failed to pursue the suit, they cannot be perpetually prosecuting the respondent by allowing the suit go for default and restore the same after the delay of three years. Since the right accrued to the defendant/respondent will be highly prejudiced if the enormous delay is condoned, this Court is not inclined to entertain this revision petition.

Hence, this Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Additional District Munsif,
Srivilliputhur.

+ 1 CC TO Mr.N.RAHAMADULLAH, ADVOCATE IN SR No. 52685

NBI

TE/RR/SAR-II : 28/04/2017 : 2P/3C

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