

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(N.P.D).No.3877 of 2012

1.Pappa,
W/o.Karumannagounder,
No.8A, padaiyachi Theru,
Thiruchengode Town and Taluk,
Namakkal District.

2.V.Vannila,
W/o.Rathinam,
Kudi Street, Kollapatti,
Animoor Post,
Thiruchengode Taluk,
Namakkal District.

3.Selvam,
S/o.Karumannagounder,
Kudi Street, Kollapatti,
Animoor Post,
Thiruchengode Taluk,
Namakkal District.

... Petitioners

-VS-

1.Raman,
S/o.Arthanari,
Erimadaipudur,
Thiruchengode Town and Taluk,
Namakkal District.

2.Mani @ Lakshmi,
W/o.Arthanari,
No.30C, Bungalow Street,
Thiruchengode Town and Taluk,
Namakkal District.

WEB COPY

3.Madesh,
D/o.Arthanari,
No.30C, Bungalow Street,
Thiruchengode Town and Taluk,
Namakkal District.

4.Marayammal,
W/o.Perumal Gounder,
Sandaipettai,
Narasu Nagar, Suriyampalayam Post,
Thiruchengode Town and Taluk,
Namakkal District.

5.Rajeswari,
W/o.Lakshman,
Sandaipettai,
Narasu Nagar, Suriyampalayam Post,
Thiruchengode Town and Taluk,
Namakkal District.

6.Erstwhile Minor Karthik,
S/o.Lakshman,
Sandaipettai,
Narasu Nagar, Suriyampalayam Post,
Thiruchengode Town and Taluk,
Namakkal District.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 31.10.2011 made in I.A.No.253 of 2011 in O.S.No.278 of 1993 on the file of the Additional District Munsif Court, Thiruchengode, Namakkal District.

For Petitioners : Mr.M.S.Palaniswamy

For Respondents : Mr.N.Manohar for R5 & R6
R2 – No Appearance
R1, R3 and R4 – dismissed vide
Court Order dated 08.02.2016.

- - - - -

ORDER

The Civil Revision Petition is filed challenging the order passed by the learned Additional District Munsif Court, Thiruchengode, Namakkal District in I.A.No.253 of 2010 in O.S.No.278 of 1993 dated 31.10.2011, in and by which the learned Judge dismissed the application filed by the revision petitioner/plaintiff to condone the delay of 914 days in restoring the suit, which was dismissed for default on 20.07.2007.

2. The brief facts are as follows:

(a) The plaintiff who is the Civil Revision Petitioner filed a suit in O.S.No.278 of 1993 on the file of the learned Additional District Munsif Court, Thiruchengode, Namakkal District for partition and separte possession of her one-third share in the suit property and for permanent injunction.

(b) It is seen that the second defendant one lakshman died. Pending the suit, the revision petitioner had filed I.A.No.253 of 2011 to bring on record the legal representatives of the second defendant. This petition was allowed on 30.06.2003. Thereafter the suit was adjourned for taking out the amendment petition and since no steps were taken by the revision petitioner, the suit was dismissed for default on 16.09.2013.

3. The revision petitioner has filed I.A.No.263 of 2004 for restoring the suit on 25.09.2003 and according to her, she also filed an application under order 6 Rule (17) of the Civil Procedure Code for amending the plaint in Diary No.4608 of 2003 along with the restoration petition.

4. After the restoration of the suit on 05.03.2007, once again time was granted to the revision petitioner to amend the plaint and once again since no step was taken, the suit was dismissed for default for the second time by order dated 20.07.2007. Nearly 914 days after this order, the revision petitioner has come forward with the application to condone the delay of 914 days in filing the application to restore the suit in I.A.No.253 of 2011.

5. In the affidavit in filed in support of the suit petition, the revision petitioner would contend that she was unwell on account of Jaundice thereafter she was struck by chikungunya and therefore, she was not in a position to meet her Counsel and only on 19.02.2010 when she met the Counsel she came to know about the dismissal of the suit on 20.07.2007. Immediately, she has taken steps to restore the suit. However in the mean while a delay of 914 days has occurred.

6. The respondents herein had filed a counter interalia contending that the only attempt made on the side of the revision petitioner is to prolong the proceedings and her claim of being unwell is not supported by any documentary evidence. It is further contended that the revision petitioner had no case to urge even the suit.

7. The learned Additional District Munsif, Thiruchengode, Namakkal District after hearing both parties, proceeded to dismiss the said petition on the ground of delay. Challenging the said order, the revision petitioner is before this Court.

8. Heard, Mr.M.S.Palaniswamy, learned counsel for the petitioners and Mr.N.Manohar for respondents 5 and 6.

9. It is to be borne in mind that the suit for partition has been filed as early as in the year 1993. The second defendant had died and the steps have been taken to implead the legal heirs in I.A.No.272 of 2002 which was ordered on 30.06.2003. It is the matter of knowledge that once the legal heirs are brought on record the plaintiff is bound to file necessary application for amending the plaint to implead the parties who have been brought on record.

10. In the instant case, it is seen that steps were not taken in this regard and the suit was dismissed for default on 16.09.2003. While filing an application for restoring the suit, the revision petitioners had not brought to the notice of this Court that an application under Order 6 Rule (17) had been filed by them on the very same date.

11. The revision petitioner has allowed the suit to be dismissed for default for the second time on 20.07.2007 on the very same ground. Thereafter the revision petitioner has waited for three years to take out the application and the only reason given for the delay is that the revision petitioner was suffering from jaundice thereafter she also suffered from chikungunya. However no documents have been filed to show that the revision petitioner was suffering from any of this ailment. The condonation of delay is not a matter of right for any litigating party. Delay has to be explained by cogent and plausible reasons. Further the conduct of the party also has to be seen.

12. In the instant case, it is seen that on the first occasion the suit was dismissed for default for not taking steps to amend the plaint. The revision petitioner who claims to have filed an

application to amend the plaint has not deemed it fit to bring it to the notice of this Court and they have allowed the second order to be passed dismissing the suit for default. Not stopping with this, they have waited for three years to file an application and viewed collectively this Court is constrained to come to the conclusion that the object of the revision petitioner is only to prolong and protract the proceedings. This Court cannot be a party to such dilatory tactics.

13. Therefore, this Court finds no infirmity in the order passed by the learned Additional District Munsif Court, Thiruchengode, Namakkal District.

14. In the result, the Civil Revision Petition is dismissed. Further, there shall be no order as to costs.

सत्यमेव जयते

31.10.2018

WEB COPY

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
tta/arb

To

Additional District Munsif Court,
Thiruchengode,
Namakkal District.

P.T. ASHA. J

tta/arb



C.R.P.(N.P.D).No.3877 of 2012

WEB COPY

31.10.2018