

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.04.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

C.R.P(NPD)No.2171 of 2011

1. Sulochana Devi
2. A.S.Kalam

...Petitioners

Versus

1. K.Kumaresan
2. Chelladurai

...Respondents

This Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the order dated 19.04.2011 passed in I.A.No.124 of 2010 in A.S.No.Nil of 2010 on the file of the Principal Subordinate Court, Salem.

For Petitioners : Mr.P.Jagadeesan

For Respondent - 1 : Mr.A.P.Srinivas

Respondent - 2 : No Appearance

ORDER

1. This Revision arises out of an order dismissing an application filed under Section 5 of the Limitation Act by the petitioners for condoning a delay of 160 days in preferring an appeal challenging the decree in O.S.No.173 of 2008.

2. The brief facts necessary for the current purpose may be stated as follows: The respondent Kumaresan and the first petitioner Sulochana Devi were spouses. When their matrimonial life was going well, they purchased two items of properties under the two sale deeds dated 04.06.2001 and 14.05.2003. On 08.12.2004, Sulochana Devi had executed a deed of settlement in favour of her husband Kumaresan. The peace within the family did not last long and soon it landed in litigation for dissolution of marriage when Kumaresan filed FCOP No.194 of 2004 before the Family Court, Salem.

3. During the pendency of this proceeding, Sulochana Devi had revoked the settlement that she had executed in favour of Kumaresan, and shortly before that on 06.12.2007, she had entered into a sale agreement for the sale of the suit property in favour of the second revision petitioner. Hence, on the strength of the said sale agreement, latter had filed O.S.No.179 of 2008 before the District Court, Salem for specific performance and it was decreed on 17.09.2008. Since, this transaction between the first revision petitioner and the second revision petitioner caused a cloud on the title, the first respondent Kumaresan filed a suit for declaration of his title in O.S.No.173 of 2008. This was contested by the revision petitioners including the second respondent herein. The learned Trial Judge had found that the deed revoking the settlement deed executed by Sulochana Devi in favour of Kumaresan is irrevocable in character

and hence the said cancellation deed is invalid, and decreed the suit in favour of Kumaresan.

4. Challenging the said decree, the revision petitioners have preferred an appeal to Principal Sub Court, Salem. In filing the said appeal, there intervened a delay of 160 days, for condoning which, the revision petitioners have filed an application in I.A.No.124 of 2010. In the affidavit filed in support of the said application, which was sworn to by the first petitioner, she would aver that she suffered a bout of jaundice, and this has resulted in delay in filing the petition. This was not accepted by the learned Sub Judge.

5.1. The learned counsel for the petitioners submitted that the first petitioner had died a couple of years ago and he could not gather any information about her legal representatives. Consequently, the Revision Petition filed by the first petitioner abates. It however, should be noted that as on today the first respondent does not have any title and the dispute is between the second petitioner who claims title to the property based on a decree of specific performance on the one hand, and Kumaresan who claims title to the suit property based on a declaratory decree in the present suit on the other.

5.2. It is strange that the person who ought to defend the title to a property for securing which he had moved the Court with a suit for

specific performance should hand over the reins to the first petitioner to file an appeal. What prevented the second revision petitioner to file an application for condoning the delay appears mysterious in the circumstances.

6. Here the learned counsel for the respondents would intervene that few piece of jigsaw puzzle that are before this Court are adequate enough to conclude that the whole appeal is stage-managed by the first petitioner herself, and the collusive nature of the suit for specific performance that the second petitioner has filed against the first petitioner with the solitary intention to defeat the right of the respondent Kumaresan over the suit property stands exposed.

7. Without getting into the theory of collusive-suit as canvassed by the counsel for the respondents, this Court is satisfied that the inaction on the part of the second petitioner itself is sufficient to conclude that the delay is not just an unexplained fact or a justifiable fact. No explanation has been given as to why the second petitioner could not prefer the appeal even if the first petitioner is down with jaundice. After all, it is his title to the property based on the decree for specific performance is at stake, and for defending the same he need not be under the shadow of the first petitioner.

8. In conclusion, this Court does not find any merit in this revision and the same is dismissed. No costs.

13.04.2018

mrr

Index : Yes / No

To

The Principal Subordinate Court,
Salem.



WEB COPY

N. SESHASAYEE, J.,

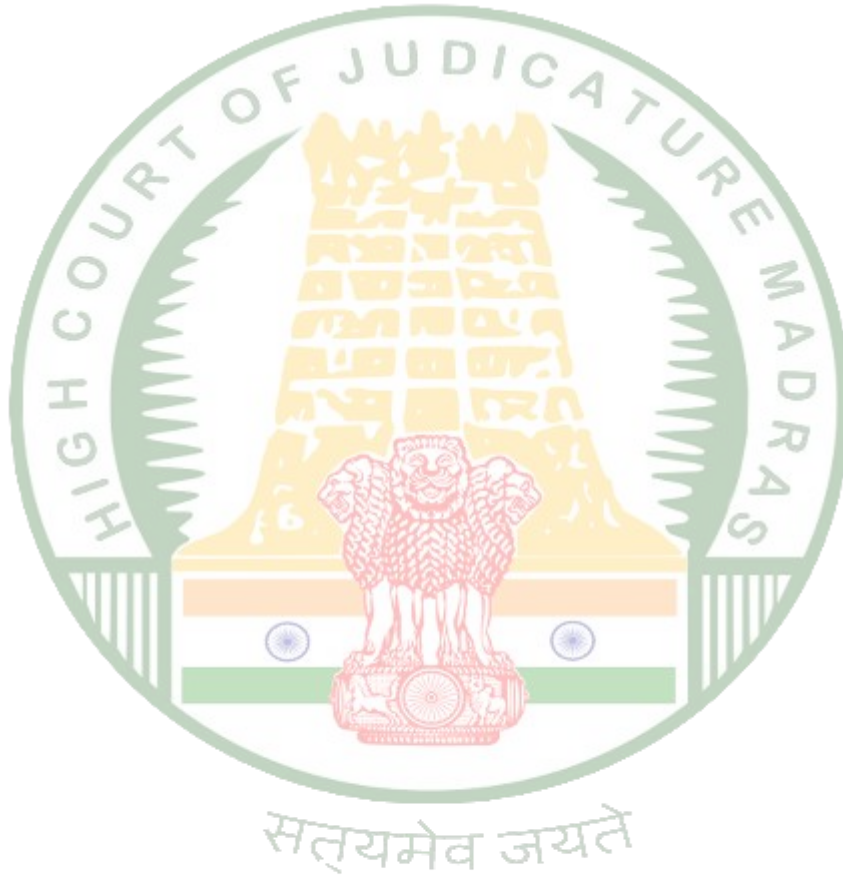
mrr



C.R.P(NPD)No.2171 of 2011

WEB COPY

13.04.2018



WEB COPY