



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (NPD) No.2016 of 2018

and

C.M.P. (MD) No.8918 of 2018

1.Chinniah

2.Thiraviyam

...Petitioners/Petitioners/Defendants 1 & 2

/Vs./

Packaiaynathan

...Respondent /Respondent / Plaintiff

Prayer: Civil Revision Petition - filed under Section 115 of the Civil Procedure Code, to set aside the order in I.A.No.49 of 2015 in O.S.No.25 of 2008 dated 13.12.2017 on the file of the 1st Additional Subordinate Judge, Madurai, and allow the civil revision petition with costs.

For Petitioners : Mr.R.Rajaraman

For Respondent : Mr.D.Sivaraman

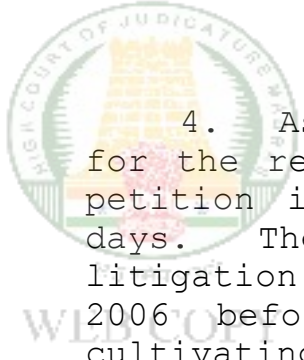
for Mr.P.Prasad Pandian

ORDER

The revision petitioners were the defendants 1 and 2 in O.S.No.25 of 2008 on the file of the First Additional Sub Court, Madurai. The respondent herein filed the said suit seeking the relief of permanent injunction. The revision petitioners entered appearance and also filed their written statement. The case of the revision petitioners was that they are the actual cultivating tenants in the suit property and not the respondent herein. Admittedly, the suit was allowed to be decreed exparte on 20.04.2010. To set aside the same, the revision petitioners filed an Interlocutory Application under Order 9 Rule 13 CPC. But then, there was delay in filing the same. To condone the delay, I.A.No.49 of 2015 was filed. The Court below dismissed the said I.A.No.49 of 2015 by order dated 13.12.2017. The correctness of the said order is challenged in this civil revision petition.

2. Heard the learned counsel on either side.

3. The learned counsel appearing for the revision petitioners touched upon the merits of the matters and wanted this Court to intervene to render substantial justice.



4. As rightly pointed out by the learned counsel appearing for the respondent, the delay occasioned in filing the set aside petition is rather inordinate. The delay has extended to 1651 days. The revision petitioners are not strangers or alien to litigation. The first petitioner herein had filed TR.No.13 of 2006 before the Tahsildar, Melur for recording them as a cultivating tenant. Therefore, the revision petitioners are expected to be vigilant. The delay of 1051 days cannot be condoned casually.

5. The learned counsel appearing for the respondent brought to my attention the decision rendered by the Hon'ble Supreme Court of India in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academic & others** reported in **CDJ 2013 SC 807**.

6. A number of parameters have been laid down and invoking those parameters, this Court can only hold that the revision petitioners have not made out sufficient cause for condonation of the delay occasioned in filing the set aside application. The Court below had given correct findings and therefore, the order impugned in this civil revision petition does not warrant any interference.

7. However, this is a matter concerning the status of the revision petitioners as cultivating tenants. The respondent also claims that he is a cultivating tenant. Therefore, in the very nature of things, the issue has to be decided by the competent authority under the Tamil Nadu Agricultural Land Records of Tenancy Rights Act, 1969.

8. The learned counsel appearing for the revision petitioners submits that they have also moved the said authority. He also make a further claim that the respondent has filed an impleading application in those proceedings.

9. If that be so, based on the outcome of the said proceedings, the revision petitioners can always take appropriate legal action.

10. With these observations, this civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

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To
The 1st Additional Subordinate Judge,
Madurai.

- + 1 CC TO MR.R.RAJARAMAN, ADVOCATE IN SR NO.84698
- + 3 CC TO MR.P.PRASAD PANDIAN, ADVOCATE IN SR NO.84418,84457
- + 1 CC TO MR.D.SIVARAMAN, ADVOCATE IN SR NO.84417

SM

BU/RSK/SAR-III :27.10.2018 : 3P/7C

Order made in
C.R.P. (MD) (NPD) No.2016 of 2018
17.09.2018