



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2018

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.398 of 2018

M.Murugesan

Rep. by his Power Agent N.Eswaran

: Petitioner/Petitioner/
Petitioner/Plaintiff

Vs .

- 1.S.Ayyappan
- 2.S.Arunachalam
- 3.S.Muthulakshmi
- 4.C.Puspavalli
- 5.B.Mahalakshmi
- 6.S.Murugaiah
- 7.K.Rukmani
- 8.N.Shemala
- 9.K.Muthukumaran
- 10.M.Bhavani
- 11.K.Pandiyan
- 12.C.Lakshmi
- 13.C.Sanjaykumar (minor)
Rep. by Mother lakshmi, 12th respondent
- 14.T.Poornam
- 15.N.Vellaiammal
- 16.S.Amutha
- 17.Alagarsamy
- 18.Pitchaiammal
- 19.V.Karuppiah
- 20.The Joint Sub Registrar,
1st Joint Sub Registrar Office, Katcheri Road,
Periyakulam Taluk,
Theni District.

: Respondents/Respondents/
Respondents/Defendants

Prayer: Civil Revision Petition is filed under section 115 of the Code of Civil Procedure, against the fair and decreetal order, dated 06.08.2017 passed in I.A.No.349 of 2017 in I.A.SR.No.891 of 2017 in O.S.No.100 of 2010 on the file of the District Munsif Court, Periyakulam, Theni District.

For Petitioner : Mr.R.Saravanan

**ORDER**

This civil revision is filed against the order dated 06.08.2017 passed in I.A.No.349 of 2017 in I.A.SR.No.891 of 2017 in O.S.No.100 of 2010 on the file of the District Munsif Court, Periyakulam, Theni District, dismissing the application to condone the delay of 206 days in filing the petition to restore the suit, which was dismissed for default on 13.07.2016.

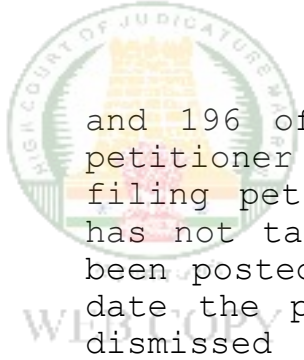
2. The petitioner is the plaintiff in the suit in O.S.No.100 of 2010 and the said suit has been filed for partition, permanent injunction and for future mesne profit. The respondents are the defendants, who have contested the suit.

3. The learned counsel appearing for the petitioner has contended that due to ill-health, the petitioner was not able to appear before the trial court on that day and hence, the suit was dismissed for default. When the petitioner came to know about the dismissal order, there was a delay of 206 days in filing a petition to restore the suit, which was dismissed for default. As the delay caused is neither wilful nor wanton, the petitioner has submitted the petition to condone the delay, which was dismissed by the learned Trial Judge on 22.08.2017, against which the present Civil Revision Petition is filed.

4. Per contra, the learned counsel appearing for the respondents has contended before the lower Court that the petitioner has been deliberately prolonging the matter and the respondents have serious objection in allowing this Civil Revision Petition and the petitioner has not given any valid reason or sufficient cause for the delay in filing the Interlocutory Application and the suit is of the year 2010.

5. Heard the learned Counsel for the petitioner and perused the materials available on record.

6. It is seen from the records that the suit is filed for partition, permanent injunction and for future mesne profit and the suit has been filed in the year 2010, through the power of attorney. On 17.03.2014, issues have been framed and the suit was posted in the list for Plaintiff's side evidence on 09.06.2014. The petitioner has filed an application to remove the case from the list and the same was allowed. Again the case was posted on 05.01.2015 for plaintiff's side evidence. Even thereafter, the petitioner has not appeared for two adjournments and he filed an application under Order 1 Rule 10(2) of Civil Procedure Code stating that he wants to implead some persons as party to the proceedings, which was numbered as I.A.No.95 of 2014 and the same was dismissed on 11.12.2015. Thereafter the petitioner did not take any steps to come forward to let in evidence and the case was posted for evidence on 16.03.2016. Again the petitioner filed Interlocutory Applications in I.A.Nos.195



and 196 of 2016 and the same was dismissed on 22.06.2016. The petitioner has taken all effective steps to delay the matter by filing petition after petitions. Even thereafter, the petitioner has not taken any steps to let in evidence and again the case has been posted for plaintiff's side evidence on 13.07.2016 and on that date the petitioner has not appeared and therefore, the suit was dismissed for default. Therefore, the above attitude of the petitioner goes to show that his intention is only to protract the proceedings.

7. The trial court, after analysing the entire facts and circumstances of the case, has rightly dismissed the petition and I do not find any perversity or illegality in the order impugned in this revision.

8. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
District Munsif Court,
Periyakulam,
Theni District.

+ 1 CC TO Mr.R.SARAVANAN, ADVOCATE IN SR No. 51827

RM
TE/KKR/SAR-1 : 22/03/2018 : 3P/3C

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