



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.1928 of 2015

1. S.Irish Raja
2. S.Inus Raja @ Ivin ... Petitioners/Petitioners/Appellants

-vs-

R.Raja ... Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order passed in I.A.No.164 of 2014 in A.S.SR.No.529 of 2014 on the file of Principal Subordinate Judge, Nagercoil dated 07.02.2015 and pass such further or other orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioners : Mr.M.P.Senthil
For Respondent : Mr.F.X.Eugene

O R D E R

The revision petitioners are the plaintiffs in O.S.No.700 of 2009 on the file of the learned Principal District Munsif Court, Nagercoil and in the suit, the plaintiffs sought for the relief of declaration, permanent injunction etc. The respondent herein also filed a suit in O.S.No.295 of 2009 seeking for the relief of permanent injunction. The Trial Court, by common judgment, had dismissed the suit filed by the petitioners and allowed the suit filed by the respondent herein. Aggrieved by the dismissal, the revision petitioners filed I.A.No.164 of 2014 in A.S.SR.No.529 of 2014 before the learned Principal Subordinate Judge, Nagercoil with the prayer to condone the delay in preferring the appeal and the said application was dismissed on the ground that no proper reasons have been assigned in approaching the Court. Challenging the said order, the petitioners are before this Court.

2. It is the case of the revision petitioners that their grandfather constructed a house by using two cents of land and he had executed a gift deed in favour of the father of the revision petitioners on 18.12.1998 in respect of certain portion of the land, thus, the plaintiffs and his father became the absolute owners of the property in question. While so, the respondent, by way of a forged document, claimed the rights over the property. It is the further case of the revision petitioners that mere mutation in revenue records alone will not entitle the respondent to claim



rights over the property and the respondent also attempted to trespass into the property by force and had stealthily taken away coconuts from their land.

3. The revision petitioners state that the alleged sale deed produced by the respondent herein had already been cancelled and therefore, the plaintiffs are the absolute owners of the property by means of gift deed. It is further stated that since there was an error committed by the Trial Court, the plaintiffs sought to file an appeal against the decree on account of existence of valid grounds to assail the decree and judgment, with a delay of 230 days. The delay had occurred due to some unavoidable circumstances, as they were in employment as Masons in Kerala. However, the Appellate Court, without properly appreciating the facts and circumstances, has simply dismissed the application instead of condoning the delay. Contending that the order of the Appellate Court is per se illegal, it is prayed that the order is liable to be set aside.

4. Learned counsel for the respondent has contended that the petitioners have filed the petition only with an intention to drag on the proceedings and the delay in preferring the appeal has not been properly explained. The Trial Court had carefully examined all the material particulars before rendering its findings and delivered the judgment. The revision petitioners, in support of their stand that they have been working in Kerala, have not produced any proof therefor and therefore, finding no valid ground or reasons to condone the delay, the Appellate Court has dismissed the application. Hence, there is no error in the order of dismissal passed by the learned Appellate Court and the petition is liable to be dismissed in limine.

5. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent. This Court also perused the material documents available on record.

6. It is the stand of the revision petitioners that they are the absolute owners of the property in question in consequence of the gift deed and according to the respondent, he was residing in the far off place and taking advantage of his absence for long period, the revision petitioners attempted to trespass into the property, which was some how prevented by the respondent on 29.03.2009. It is further stated by the respondent that since their interference continued, he filed the suit for permanent injunction, which was decreed in his favour.

7. It is not in dispute that the Trial Court had dismissed the suit filed by the revision petitioners and they decided to file an appeal before the concerned Appellate Court, of course, with the delay of certain days. The only reason adduced on the side of the petitioners is that they were not able to contact their Advocate pursuant to their work at Kerala and therefore, the appeal could not be filed in time.



8. Though the revision petitioners were able to contest the suit regularly before the Trial Court, subsequently, due to some inevitable circumstances, they did not contact the Advocate and file the appeal in time, which put them in an advantageous position. As repeatedly held by this Court, in the matter of condonation of delay, a lenient view should be taken to condone the delay. This Court, on earlier occasion in the case of G.Krishnamoorthy vs., Arulmighu Sri Pataleeswarar Devasthanam, rep. by its Executive Officer, Cuddalore, reported in 2010 (1) MWN Civil 837, has clearly held that the petition for condonation of delay can be allowed, if it is proved that the party has not received proper communication from his lawyer in respect of his case.

9. In the present case on hand, it has been repeatedly reiterated by the petitioners that pursuant to their engagement of work in Kerala, there was no communication between them and their Advocate and therefore, the delay has occurred in filing appeal, which is an acceptable ground to consider the case of the petitioners. Accordingly, upon hearing both sides and finding merits in contention raised by the petitioners, this Court is of the view that the order dated 07.02.2015 passed in I.A.No.164 of 2014 in A.S.SR.No.529 of 2014 by the learned Principal Subordinate Judge, Nagercoil, is liable to be set aside, but with costs.

10. In the result,

(a) this Civil Revision Petition is allowed and the order dated 07.02.2015 passed in I.A.No.164 of 2014 in A.S.SR.No.529 of 2014 by the learned Principal Subordinate Judge, Nagercoil, is hereby set aside, subject to the condition that the petitioners shall pay a sum of Rs.15,000/- (Rupees Fifteen Thousand only) to the respondent herein within a period of two weeks from the date of receipt of copy of this order;

(b) the learned Principal Subordinate Judge, Nagercoil, on production of the receipt in proof of payment of costs by the petitioners within the time limit prescribed by this Court, is directed to number the appeal and dispose of the same, within a period of four months from the date of production of receipt. No costs.

Sd/-

Assistant Registrar (W)

/True copy/

Sub Assistant Registrar

To:
<https://hcservices.ecourts.gov.in/hcservices/>

1. The Principal Subordinate Judge,
Nagercoil.



2. The Principal District Munsif Court,
Nagercoil

3. The Record Keeper,
ER Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.M.P.Senthil, Advocate, SR.No.61567.

+1cc to Mr.F.X.Eugene, Advocate, SR.No.61793.

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