



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (PD) (MD) No.2175 of 2018

Peya Thevar (died)

1.Jeya @ Jeyalakshmi

2.Sureshkumar

3.Asha Prabha

...Petitioners

-VS-

Renganathan

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order passed by the learned District Judge, Theni in I.A.No.58 of 2017 in unnumbered A.S.No.of 2017 dated 29.08.2018.

For Petitioners : Mr.S.Nateshraaja

For caveator : Mr.B.Rajesh Saravanan

ORDER

The revision petitioners are the legal heirs of the defendant in O.S.No.121 of 1996 on the file of the Sub Court, Periyakulam. The suit was decreed exparte on 02.11.2000. The defendant applied for setting aside the same, but with delay. The trial Court declined to condone the delay. Questioning the same, the defendant filed C.R.P.(MD)No.1185 of 2003. The said petition was dismissed on 05.01.2011.

2. Even during the pendency of the said Civil Revision Petition, the original defendant passed away and the present revision petitioners had come on record. The present revision petitioners filed a Review Application No.3 of 2012 and the same was dismissed on 30.01.2013. Thereafter, the contest shifted to the execution proceedings. After losing their application before the executing Court, the present first appeal was filed on 28.11.2017. In the meanwhile, there arose a delay of 6190 days. To condone the same, I.A.No.58 of 2017 was filed. The Court below dismissed the said application by order dated 29.08.2018. The correctness of the said order is questioned in this petition.



3. Heard the learned counsel on either side.

4. The learned counsel appearing for the revision petitioners contended that the suit agreement does not contemplate institution of the suit for specific performance of executing a sale deed. The agreement has a default clause. It is only for payment of a sum of Rs.30,000/- (Rupees Thirty Thousand only). He also pointed out that the exparte judgment and decree passed by the trial Court does not satisfy the parameter of the judgment as laid down in Order 20 of the Civil Procedure Code. These contentions are attractive. But then, this Court cannot ignore the fact that the delay is simply beyond explanation. The defendant passed away even during the pendency of the first Civil revision petition. The revision petitioners had prosecuted the said petition. They ought to have obtained leave of this Court to exclude the delay and thereafter, filed a regular first appeal. They did not do so. Instead of that, the first appeal came to be filed only in the year 2017.

5. At this point of time, they cannot blame their counsel. The Court below has rightly held that the delay is unexplained and sufficient cause has not been made out. In this view of this matter, this Court does not find any reason to interfere with the order impugned in this Civil Revision Petition.

6. Hence, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)

To:

The learned District Judge, Theni.

+1cc to Mr.S.Nateshraj, Advocate, SR.No.88152

+1cc to Mr.B.Rajesh Saravanan, Advocate, SR.NO.88490

TA

SS/SKN/SAR 3/28.11.2018/2P/4C

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