



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.02.2018

Delivered on : 20.03.2018

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CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (NPD) (MD) No.1050 of 2011

Muniappan

... Petitioner/Petitioner/Plaintiff

Vs.

1. Seed Non Government Organisation
Represented by its president,
Kavalkaranpatti.
Kulithalai Taluk.
2. Thirumalai,
Thogamalai Village,
Kulithalai Taluk.
3. The Block Development Officer,
Thogamalai Panchayat Union,
Kulithalai Taluk.
4. The State of Tamil Nadu,
Rep. By its Karur District Collector,
Karur.
5. The Tahsildar,
Taluk Office,
Kulithalai.

... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 03.01.2011 in I.A.No.184 of 2009 in O.S.No.42 of 2000 on the file of District Munsif Court, Kulithalai.

For Petitioner : Mr.K.Govindarajan

For R1 & R2 : No Appearance

For R3 to R5 : Mr.A.Thiyagarajan

**ORDER**

This Civil Revision Petition has been preferred against the fair and decreetal order passed in I.A.184 of 2009 in O.S.No.42 of 2000 on the file of the District Munsif, Kulithalai.

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2.The brief facts of this case are as follows:

The suit was filed by the plaintiff/revision petitioner in O.S.No.42 of 2000 for permanent injunction and mandatory injunction with regard to Government Kulam Poramboke Land and the same was dismissed on 10.08.2005. Hence, the plaintiff had filed an petition to restore the original suit on file. The said petition was returned for some rectifications within 14 days. But due to the bundle was misplaced in the Advocate's office there was a delay of 1085 days occurred in re-presenting the said Application. Therefore, the revision petitioner has filed I.A.No.184 of 2009 for condonation of delay.

2(ii).The defendants/respondents stated that the reasons for the delay stated by the plaintiff are not acceptable. Moreover, the delay caused is enormous. Hence, the petition is to be dismissed.

2(iii).After hearing on both sides and on perusal of records, the trial Court has dismissed the I.A.No.184 of 2009. Against which the plaintiff has filed this Civil Revision Petition and attacked the order on the following grounds. The first ground is that it is a natural one in an Advocate office that the bundle mixed with other bundles and the same cannot be put against the litigant and the lower court ought to have approached the same liberally. The second ground is that the lower Court failed to see that the suit filed by the plaintiff is for permanent injunction and mandatory injunction and as such the respondent will not be prejudiced if the delay is condoned. The third ground is that the lower Court erred in relying the prayer in the suit and the contention of the respondent with respect to the nature of property without any evidence.

3.Heard both sides and perused the materials available on record.

4.The I.A.No.184 of 2009 was filed by the plaintiff to restore the suit which was dismissed for default on 10.06.2005. On perusal of records it is learnt that the said application was returned for some corrections and in re-presenting the said petition after compliance there occurs a delay of 1085 days. For the above said petition the respondents filed a counter and stated that the application filed to set aside the order passed on 10.06.2005 was returned and the huge delay occurred in re-presenting the same and the intention of the petitioner is only to



drag on the proceedings and to cause inconvenience to the respondents.

5. On perusal of records, it is observed that the suit is filed for permanent injunction and mandatory injunction. The suit property in that suit belongs to the Government which is Kulam Poramboke Nilam (குளம் புறம்போக்கு நிலம்). On perusal of the plaint, it is learnt that the suit property was encroached by the plaintiff's great grand father for more than 50 years and he was issued with 'B' memo also and after his death, the plaintiff was in possession of the property and the defendants caused objection when the plaintiff was trying to build a fence in the suit property, since he has 7 month old crops in his land. The case of the plaintiff is that as per the admission of the defendants, who have made asbestos tent in the suit property, the plaintiff is seeking for mandatory injunction for removal of the said structures. The 3rd defendant is the Block Development Officer and he has filed statement that the plaintiff himself is a trespasser as against the Government who is the real owner and the 3rd defendant is one of the wings whose responsibility is to execute the order of the Government. Further, the third defendant has stated that he approached the Government land to implement the Government Scheme (Swarna Jeyanthi Self Employment Scheme) to construct a shelter with asbestos sheet for the gravel workers who were toiling through out the day in the part scratching sun and rain and already the Revenue Department handed over the suit property to the third defendant on 05.03.2000 and tenders were called for on 17.03.2000, after which publications were effected and the work was also completed even prior to the suit. The second defendant also filed his written statement stating that this suit is barred under Encroachment Act as no suit for injunction shall be filed under this Act.

6. For the delay condonation petition, the respondents 3 and 4 who are the Block Development Officer and Tahsildar had strongly objected for the petition filed by the petitioner for condoning the delay in re-presenting the petition to restore the suit. On perusal of the entire records, it is observed that the suit property is one Kulam Poramboke which belongs to the Government, in which the plaintiff cannot claim any absolute title. Further, as per the proposal the Government has also fixed the property for the purpose of a structure to construct a shelter with asbestos sheet for the gravel workers who were toiling throughout the day in the part scratching sun and rain and the same was also constructed before the suit. Further, when the property belongs to the Government, the relief sought by the plaintiff is also not maintainable. Further, the petitioner/plaintiff has not stated any reason for the huge delay.

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

7. In the above circumstances, regarding the nature of the



property and the relief sought by the plaintiff and considering the purpose for which the suit property was already utilized and in view of the fact that no proper explanation has been given for the huge delay, the dismissal order of the trial Court passed in I.A.184 of 2009 does not require any interference.

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

Sd/-

Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar

To

The District Munsif Court,
Kulithalai.

+ 1 cc TO Mr.K.Govindarajan , Advocate in SR No. 57141
+ 1 cc TO The Special Government Pleader in SR No.56781

TM/CM

AE/JC/SAR3/02.04.2018/4P/4C

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20.03.2018