



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2018

Coram:

THE HONOURABLE MRS. JUSTICE.S.RAMATHILAGAM

C.R.P (MD) (NPD)No.258 of 2011 and
MP(MD).No.1 of 2011

Maharajan

...Petitioner /Petitioner/1st Defendant

-Vs-

1.S. Rajagopal

2.Jeyakumar

...Respondents/Respondents/Plaintiffs

Prayer: This Civil Revision Petition is filed Under Section 115 of CPC, to set aside the fair and decreetal order passed in I.A.No.75 of 2010 in O.S.No.53 of 1999 on the file of the District Munsif Court, Shencottah, dated 25.11.2010.

For Petitioner : Mr.R.Manimaran

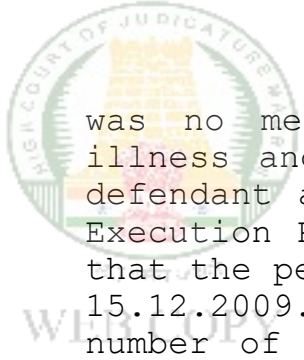
For Respondents : Mr.S.P. Maharajan

O R D E R

This Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.75 of 2010 in O.S.No.53 of 1999, on the file of the District Munsif Court, Shencottah, dated 25.11.2010.

2. The suit in O.S.No.53 of 1999 has been filed by the plaintiffs for declaration and injunction and the said suit was decreed ex parte on 18.06.2002 and thereafter, the plaintiffs have filed Execution Petition in E.P.No.47 of 2008. In such circumstances, the revision petitioner / first defendant has filed an Interlocutory application in I.A.No.75 of 2010 in O.S.No.53 of 1999 for condoning the delay of 2706 days in filing an application to set aside the ex parte decree passed in the said suit. The Trial Court, after analyzing the facts and materials dismissed the above application. Against which the petitioner has filed the present Civil Revision Petition.

3. It is the argument of the petitioner before the trial Court that the petitioner is a heart patient and at the time of trial, he was under treatment. But, he has not produced any documents before the trial Court for the illness and the period of treatment for 6 years. The trial Court has also perused that there



was no medical report produced before the trial court for the illness and treatment. Further, the revision petitioner / first defendant admitted that he has appeared through his counsel in the Execution Petition in E.P.No.47 of 2008 on 16.09.2008. Even after that the petition to set aside the ex parte decree was filed only on 15.12.2009. In support of his contention, the petitioner has quoted number of decisions for condoning the delay that occurred in his case and in those cases, the reason for delay is properly explained. But, in this case the delay is not properly explained with sufficient proof and hence, the trial Court has dismissed the same.

4. The reasons stated by the petitioner for the delay in the affidavit is that the matter was discussed before the Panchayat and the respondents / plaintiffs have agreed for possession only to their limit and on the assurance, he did not proceed with the case. The revision petitioner has not proceeded with the case and only behind the back of this petitioner, the respondents / plaintiffs obtained ex parte decree.

5. The said fact was very much contradictory by the petitioner. When he was examined before the trial Court, the petitioner herein has also appeared in the Execution Petition. But, he has filed this petition with a delay of 10 months. The reasons stated for the delay before the trial Court is one that the petitioner has some Cardiac problem and he was under treatment for a very long time.

6. Hence, the argument of the petitioner and the fact mentioned in the affidavit are very much contradictory to the evidence placed before this Court. The petitioner has not come forward with true facts for such abnormal delay and further, the delay is not properly explained even during the pendency of the Execution Petition, the matter was also referred before the Lok Adalat. The revision petitioner, who has failed in that attempt to proceed with the case, filed this application causing much delay and preventing the respondents in enjoying the fruit of the decree.

7. It is the property of the respondents and that the petitioner herein has encroached the same and he was all along enjoying the same. If really the plaintiffs have no right in the suit property, the revision petitioner would not slept over for very many years and only with an intention to delay and defraud the right of the respondents, the application in I.A.No.75 of 2010 is filed and the same has also not properly explained.

8. In such circumstances, the learned Judge considered all the materials on record in proper perspective and has given valid and cogent reasons for dismissing the Interlocutory Application. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.



9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P&A)

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Sub Assistant Registrar

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The District Munsif, Shencottah,

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