



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P (NPD) (MD) No.631 of 2013

Venkatachalam

...1st Petitioner/1st Petitioner/
1st Petitioner/1st Plaintiff

-vs-

1.Gopal

2.Irulappan

3.Karunagara Pandian

... Respondents 1-3/Respondents 1-3/
Respondents 1-3/2nd Defendant/
3rd Party Auction Purchaser/Condemner

4.Rajagopal

...4th Respondent/2nd Petitioner/
2nd Petitioner

PRAYER: Civil Revision Petition is filed, Under Section 115 of Civil Procedure Code, praying to call for the records in fair and decreetal order in E.A.No.425 of 2009 in unnumbered E.P.No. Of 2008 in O.S.No.160 of 1998 dated 17.10.2012 on the file of the Sub-Ordinate Court, Palani and allow this Civil Revision Petition with costs throughout.

For Petitioner

: Mr.H.Lakshmi Shankar

For R1 to R3

: Mr.R.Sundar

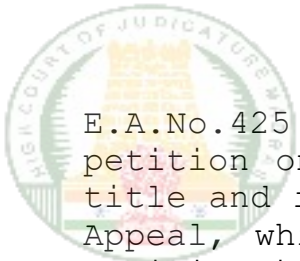
ORDER

This Civil Revision Petition has been filed by the petitioner herein, who is the first plaintiff in the suit in O.S.No.160 of 1998.

2.The brief facts, which are required for the disposal of this petition, are as follows:-

2.(i)The petitioner herein filed a suit in O.S.No.160 of 1998 before the Sub-Court, Palani for declaration and injunction alleging that the defendants in the suit are interfering with his possession and the said suit was decreed in favour of the petitioner as per the Judgment and Decree in A.S.No.231 of 2001 on the file of the Additional District Court cum Fast Track Court, Dindigul.

2(ii)Thereafter, the petitioner has filed an Execution Petition before the Subordinate Court, Palani, and the same was returned. However, the same was re-presented by the revision petitioner with a petition to condone the delay of 431 days in



E.A.No.425 of 2009 in unnumbered E.P. The Lower Court dismissed the petition on the ground that the primary issue, regarding the right title and interest of the plaintiff, is the subject matter of Second Appeal, which is pending before this Court and that therefore, the petition is unnecessary and unsustainable.

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3.The learned counsel for the petitioner submitted that the suit has been decreed and that the decree is not suspended, during the pendency of the Second Appeal before this Court. The learned counsel for the petitioner has stated in the Execution Petition that the decree of injunction is wilfully disobeyed by the respondents and therefore, the respondents should be detained in civil prison or property of the respondents should be attached. The petition filed under Order 21 Rule 32 of C.P.C is returned. The issue whether the petitioner is entitled to get the relief as prayed for on merits in the Execution Petition cannot be decided in the application filed for condoning the delay in re-representation.

4.Though the fact that the execution petition was returned by raising an issue regarding the maintainability, this Court is of the view that the petition cannot be returned merely because the Second Appeal, challenging the Judgment and decree in the suit, is pending. In the considered opinion of this Court, since the petition is maintainable, the Lower Court has to consider the delay on merits, after numbering the application.

5.In view of the above, the order passed by the learned Subordinate Judge, Palani in E.A.No.425 of 2009 in unnumbered E.P.No. of 2008 dated 17.10.2012 is set aside. The matter is remitted back to the Lower Court for fresh disposal. The Lower Court is directed to consider the petitioner's application to condone the delay in re-presenting the execution petition on merits and in accordance with law, after affording reasonable opportunity to the parties concerned.

6.In the result, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar (Crl. Side)

/True Copy/

Sub Assistant Registrar

To

The Sub-Ordinate Judge,
<https://hcservices.ecourts.gov.in/hcservices>
Palani.



+1CC to Mr.H.Lakshmi Shankar, Advocate, SR.No.67732
+1CC to Mr.R.Sundar, Advocate, SR.No.67698

C.R.P (NPD) (MD) No.631 of 2013
11.06.2018

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