

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 07.11.2019

Orders Pronounced on : 13.11.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.NPD.No.837 of 2008

and

M.P.No.1 of 2008

1.T.Santhakumari

2.T.Rajesh Kumar

3.T.Sangeetha

4.T.Sowmya

..Petitioners

Vs.

1.Meera balasubramaniam

2.P.Sundarajan @ Sundar

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 24.10.2007 passed in I.A.No.1813 of 2006 in O.S.No.3415 of 2004 on the file of the learned Principal District Munsif, Coimbatore.

For Petitioners : Mr.M.Sriram

For R1 and R2 : No Appearance

ORDER:

The petitioners herein are the legal heirs of the deceased K.Thirugnanasambandam. Originally the deceased K.Thirugnanasambandam preferred a suit against the respondents herein, in O.S.No.3415 of 2004 on the file of the learned Subordinate Judge, Coimbatore and seeks the relief of specific performance directing the defendants / respondents to execute the sale in favour of the plaintiff over the suit property. During the pendency of the said suit, the said K.Thirugnanasambandam died on 25.05.2003 leaving behind the petitioners as his legal heirs. However, the said suit was dismissed for default for non appearance of plaintiff.

2.After the dismissal of the suit, the petitioners herein filed an application under Section 5 of Limitation Act to condone the delay of 1046 days in filing the petition to set aside the abatement of death of the plaintiff. The learned Principal District Munsif, Coimbatore in its order dated 24.11.2007 dismissed the application filed by the petitioners. Aggrieved over the said order, the petitioners are before this Court with the present Civil Revision Petition.

3.The averments made in the affidavit filed by the petitioners is as follows. The first petitioner is the wife of the deceased plaintiff. The second to fourth petitioners are the son and daughters of the said deceased K.Thirugnanasambandam. The deceased plaintiff filed a suit as against the respondents and praying the relief of specific performance. During the pendency of the above proceedings, he died on 25.05.2003. Immediately the petitioners herein filed an application to implead them as party to the suit before the Sub Court, Coimbatore. In the meantime, on the point of jurisdiction, since the said suit was transferred to the Court of District Munsif, the counsel appearing for the petitioners inform the proceedings after renumbering the case before the learned District Munsif, Coimbatore since the third petitioner Rakesh Kumar is doing business in Andhra he stayed at Andhra Pradesh. Further due to old age, the first petitioner Santhakumari is also not in a position to contact the advocate. Further the other petitioners are residing in faraway places and they are also not contacted the advocate. Moreover, after demise of the said Thirugnanasambandam, the respondents herein advised the second petitioner as not to contest the suit and assured to settle the dispute amicably by negotiation. Believing the words of respondents, the second petitioner is under the impression that the respondent not

contested the suit in O.S.No.4023 of 1996 and there will be an amicable resolution of litigation. The delay in filing of the petition due to transfer of the suit from the Sub Court to Munsif Court and also due to representation made by the respondents. Only after the receipt of notice, in the connected suit in O.S.No.4023 of 1996, the second petitioner herein know the details of the case and thereby the application is filed to condone the delay of 1046 days in filing the application to set aside the abatement.

4.The short facts of the averments contained in the counter affidavit filed by the second respondent and adopted by the first respondent is as follows. It is false to state that the respondents advised the second petitioner to settle the dispute amicably by negotiation. It is equally false that the petitioner was under belief that the respondents also had not contested the suit in O.S.No.4023 of 1996. The court is not responsible for transferring the suit from the Sub Court to Munsif Court. The non contest of the case by the petitioners nearly three years as stated in the affidavit itself proves that the laches and negligence on the part of the petitioners in filing the application to set aside the abatement. The suit transferred from the Sub Court has been renumbered on the file of the learned District Munsif in the year 2004 itself. The respondents already filed

application within a time to implead the legal heirs of the deceased defendant in O.S.No.4023 of 1996 which was filed by the respondents. The petitioners have not projected sufficient cause to condone the delay of 1046 days in filing the application to set aside the abatement. Based on the arguments advanced by the counsels on either side, as already stated, the learned Principal District Judge on 24.11.2007 dismissed the application filed by the petitioners.

5.The learned counsel appearing for the petitioners would contend that without considering the family circumstances of the petitioners, the learned Principal District Munsif, Coimbatore by observing as the other two applications, one is for set aside the abatement, another one is for impleading the petitioners as party to the proceedings are not filed, came to the conclusion that the petition filed by the petitioners deserves to be dismissed. So, the said finding is erroneous in law. He relied on the judgment of ***S.Thiruvaramuthu and others Vs. Southern Railways, represented by its General Manager, Madras and others*** reported in ***2005 (5) CTC 460***, and made a submission that it is not necessary to the petitioner to file application to set aside the abatement and to implead the petitioners as party to the proceedings with the application filed under Section 5 of Limitation Act. It is true in the

judgment referred by the learned counsel appearing for the petitioners, this Court has held that it is not mandatory on the part of the petitioners to file applications to set aside the abatement and for impleading the party along with Section 5 Application. So on that score, the findings arrived by the learned Principal District Munsif, Coimbatore is liable to be set aside. However on go through the impugned order passed by the trial court, it was observed that the petitioners have not projected sufficient cause for the delay. However it was observed that the petitioners have not mentioned the date of dismissal, date of gaining knowledge in respect to the dismissal of the suit.

6.In this regard, it is true on go through the entire averments set out in the affidavit filed by the petitioners, he has not stated anything about the date of dismissal. Further he has not stated anything about the date on which they know the order of dismissal. He simply says that only after receiving notice from the O.S.No.4023 of 1996 he came to the knowledge that the suit filed by his father was dismissed. But the date of receipt of notice and other particulars have not been mentioned in his affidavit. Though the second petitioner was doing business in Andhra Pradesh, nothing prevented the first, third and fourth petitioners to file application to implead them as party to

the proceedings immediately after demise of the said Thirugnanasambandam. The said attitude committed by the petitioners is nothing but they have not projected sufficient cause. Though condoning the delay is the discretionary relief, in order to get the same, the party who filed application must project sufficient cause. Further the party to the proceedings are always having the vigil and care in watching the case proceedings.

7.In this case, without following the duties which necessarily has to be followed by the petitioners in respect to the proceedings of the case, mentioning the unproved allegations against the respondents is not at all appreciable one. Before conclusion, this Court would like to say that the maxim *Vigilantibus non dormientibus jura subveniunt*(law assists) those who are vigilant and not those who sleep over their rights aptly applies to the case on hand.

8.For the above reasons, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

13.11.2019

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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R.PONGIAPPAN,J.

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To
The learned Principal District Munsif,
Coimbatore.



Pre Delivery order made in
CRP.NPD.No.837 of 2008
and M.P.No.1 of 2008

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