

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP NPD No.3665 of 2009 and
M.P.No.1 of 2009

Muniammal

... Petitioner

Vs.

1. Avinashiappan
2. A.Ramalingam
3. A.paramasivam
4. Chinnappan

... Respondents

Prayer Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 03.09.2009 passed in I.A.No.1320 of 2008 in O.S.No.165 of 1998 by the Distrit Munsif Court, Tiruppur.

For Revision Petitioner

: Mr.Venkatasubban

for M/s Sarvabhauman Associates

For respondents No.2 to 4 : No appearance

ORDER

This revision petition has been filed, challenging the order passed by the trial court, allowing the application filed to condone the delay of 3004 days in filing the application filed to set aside the exparte decree passed on 09.07.2001.

2. The revision petitioner is the plaintiff in the original suit and she filed the suit for permanent injunction on the basis of having possession of the suit property. The defendants 2 to 4 are the children of the first defendant. The defendants in their written statement interalia contended that the suit property was originally belonged to the father of the first defendant and the plaintiff is the wife of the brother of the first defendant and till the death of the father of the first defendant, the defendants were in possession of the suit property and after that, when the first defendant went to Karnataka State to ekeout livelihood, the plaintiff encroahced the property and claiming right over there.

3. It appears that when the suit was pending, the defendants were set exparte and exparte decree was passed on 09.07.2001 in favour of the plaintiff. Therefore, the defendants filed an application to condone the delay of 3004 days in filing the petition to set aside the exparte decree, on the ground that, since the first defendant went to Karnataka State to ekeout livelyhood, he had no knowledge about the exparte decree and only when the first defendant demanded partition of the suit property, he came to know about the exparte decree and there occurred a delay of 3004 days and the delay is neither wilful nor wanton and hence the petition may be allowed.

4. Before the trial court, in the condone delay petition, the third defendant and his mother were examined as PW1 and PW2 and the plaintiff was also examined as RW1. The plaintiff herself in her examination as RW1 deposed that she has no objection to pass judgment in the suit on merits after full contest. By taking into consideration the above admission, though the delay is huge, in order to give a chance to the parties to establish their substantial right, the trial court allowed the application on payment of costs. Against which, the present revision petition has been filed by the plaintiff.

5. The learned counsel appearing for the revision petitioner submitted that the delay of 3004 days has not been properly explained and without sufficient explanation or cause to condone such huge delay, the trial court ought not to have allowed the application.

6. No representation for R2 to R4, though their counsel name is printed in the cause list.

7. I have perused the order of the trial court. As referred above, the suit has been filed for permanent injunction. It is the contention of the defendants that the suit property was owned by the father of the first defendant and hence, he has share in the property and since he left to Karnataka State for livelihood, the plaintiff filed a suit and obtained exparte decree and only when the first defendant demanded partition in the suit property, the defendants came to know about the exparte decree and since he was out of State, he had no knowledge about the exparte decree.

8. It is to be noted that in the application to condone the delay, the revision petitioner/ plaintiff was also examined as RW1 and she herself admitted that she has no objection to contest the matter on merits. Only on the above admission, the trial court exercised its discretion in condoning the delay. No doubt, the delay is huge. As a matter of fact, the same cannot be condoned. It is to be noted that when the parties are litigating their rights, who are poor and downtrodden, such parties cannot be expected to give minute reasons for delay and the court has to be lenient in favour of those parties, who are not well known the legal procedure.

9. Considering the allegation of both side in their plaint and written statement, I am of the view that the substantial right of the parties cannot be defeated merely on the ground of delay. It is to be noted that when the defendants in their written statement pleaded that the suit property was originally belonged to the father of the first defendant and his brother, who is the husband of the plaintiff and the first defendant is having share in the suit property and the settlement deed executed in favour of the plaintiff by her husband in respect of the suit property is not valid in law, such plea of the parties should not

be shut at the initial stage and the parties should be allowed to establish their case. Hence, I am of the view that the trial court is right in extending its discretion in favour of the defendants, though the delay is appears to be huge.

10. Accordingly,

(i) The revision petition is dismissed. No costs. The connected civil miscellaneous petition is closed. The order of trial court is confirmed.

(ii) The trial court is directed to dispose of the suit, within a period of 6 months from the date of receipt of a copy of this order.

30.04.2019

Index : yes/no

Internet : yes/no

Speaking order/non-speaking order
mst

To

The District Munsif Court, Tiruppur.

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N.SATHISH KUMAR. J.,
mst



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