

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2019

CORAM

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

CRP.NPD.No.957 of 2010 and
M.P.No.1 of 2010

1.Velayutha Gounder (Died)
2.Pavadai
3.Ezhumalai
4.Kuppan
5.Shankar
6.Malika
7.Alamelu

...Petitioners

(Appellants 2 to 7 brought on record as LRS of the deceased Sole Appellant Viz., Velayutha Gounder vide court order dated 06.09.2019 made in C.M.P.Nos.16457, 16463 and 16470 of 2019 in CRP.No.957 of 2010 by RPAJ)

Vs.

Govindasamy

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of the CPC against the fair and decreetal order dated 09.12.2009 made in I.A.No.646 of 2009 in O.S.No.316 of 2005 on the file of the District Munsif Court at Sankarapuram.

For Petitioners : Mr.P.Valliappan

For Respondent : M/s.Mahamandra Rajalakshmi
for Mr.J.Ramakrishnan

ORDER:

Aggrieved over the order dated 09.12.2009 passed in I.A.No.646 of 2009 in O.S.No.316 of 2005 on the file of the learned District Munsif Court, Sankarapuram, the deceased petitioner, Velayutha Gounder, who is the defendant in the above referred suit, filed this Civil Revision Petition and prayed to set aside the order dated 09.12.2009. Before the learned District Munsif Court, Sankarapuram, the respondent Govindasamy in this Civil Revision Petition filed a suit as against the said Govindasamy and seeks the relief of declaration declaring that B Schedule property is the absolute property of the plaintiff and consequentially he prayed for the relief of injunction restraining the defendant in interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

2.During the pendency of the said suit, on 17.03.2008, the learned District Munsif, Sankarapuram for the reason that the defendant has not appeared for the trial proceedings, passed an order of ex-parte against the defendant. After knowing the order of

ex-parte, the defendant has not filed any application to set aside the same within the period of limitation. He has filed application under Section 5 of the Limitation Act, 1960 and prayed to condone the delay of 366 days in filing the application to set aside the ex-parte order. After numbering the application as IA.No.316 of 2005, the learned District Munsif, Sankarapuram issued notice to the other side and on receiving the objection raised by the respondents by order dated 09.12.2009 dismissed the petition filed by the defendant, against which the Civil Revision Petition has been preferred.

3.Today when the Civil Revision Petition is came up for hearing both the counsel appearing for the petitioners and the respondent are present.

4. The learned counsel appearing for the petitioners would contend that since the petitioner is a coolie employed at Kerala State for his livelihood, he has not immediately contacted his Advocate and therefore the delay of 366 days occurred, which is not intentional.

5. On the other hand the learned counsel appearing for the respondent would contend that in the affidavit filed in support of the

petition, he has not stated sufficient cause for condoning the delay of 366 days. Only by mentioning the reason that he is in Kerala he has not filed the application within the time.

6. Submissions made by the counsel appearing on either side is considered.

7. The learned District Munsif, Sankarapuram while at the time of disposing the application filed by the petitioner has rightly held that the petitioner has not shown any sufficient cause for allowing the application. It is true on the face itself the affidavit filed by the petitioner did not have any valid reasons for the delay. The affidavit filed by the petitioner has not contained any details about the date on which the petitioner has gone to Kerala and the date on which the petitioner returned to Tamil Nadu and also about the details of employment having by him in Kerala. So it cannot be said that the order passed by the trial judge is having material irregularity. However, on going through the background of the case put forth by the plaintiff, it is apparent that even though the petitioner has not projected sufficient cause it is necessary to see the other factual aspects found in and around the suit. Actually the plaintiff has filed

the suit for relief of declaration and for permanent injunction. If the title is not proved by the plaintiff, he cannot get the remedy of declaration. In the written submission filed by the petitioner before the trial court he has stated that vide the sale deed dated 24.11.1990, 20.08.1992 he has purchased 0.98 cents of the suit schedule property. Therefore, in the said suit the plaintiff claimed title through the sale deed. So it is necessary to decide the title to avoid the multiplicity of proceedings.

8. In the said circumstances, the learned counsel appearing for the petitioner relied on the judgment of the Hon'ble Apex Court found in the case of **Ram Nath Sao Alias Ram Nath Sathu and others Vs. Gobardhan Sao and Others** reported in **(2002) 3 SCC 195**, wherein in paragraph 12 the Hon'ble Apex Court has held as follows:

"The expression "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963 or Order 22 Rule 9 CPC or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of that case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps.

However, courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

9. Further our Hon'ble Apex Court in the judgment of **Robin Thapa Vs. Rohit Dora** reported in **(2019) 7 SCC 359**, wherein the Hon'ble Apex Court held that *"Ordinarily litigation is based on adjudication on merits of contentions of parties. Litigation should not be terminated by default, either of plaintiff or defendant. Cause of justice requires that as far as possible, adjudication be done on merits."*

10. So the wording of the Hon'ble Apex Court is clear that before deciding these types of applications, two issues have to be taken into account for considering the same. One is liberal approach is necessary and other one is other circumstances have also to be taken into account. Our Hon'ble Apex Court ruled very specific that the litigation should not be terminated only by default. Therefore even though the reasons stated to condone the delay is not sufficient, since the suit is filed for declaration and other reliefs particularly for finding out the fact that who vested with the title, it is necessary to try the suit. Therefore, in view of the above, I am of the opinion that the Civil Revision Petition has to be allowed. However, since the suit is pending from the year 2005, it is appropriate to give some direction to the learned District Munsif, Sankarapuram to dispose of the same in a time framed manner.

11. The learned District Munsif, Sankarapuram is directed to post the suit in O.S.No.316 of 2005 on day to day basis and complete the trial as early as possible preferably within a period of three months from the date of receipt of a copy of this Order.

12.This Civil Revision Petition is disposed of with above observations. Consequently, connected miscellaneous petition is closed. No costs.

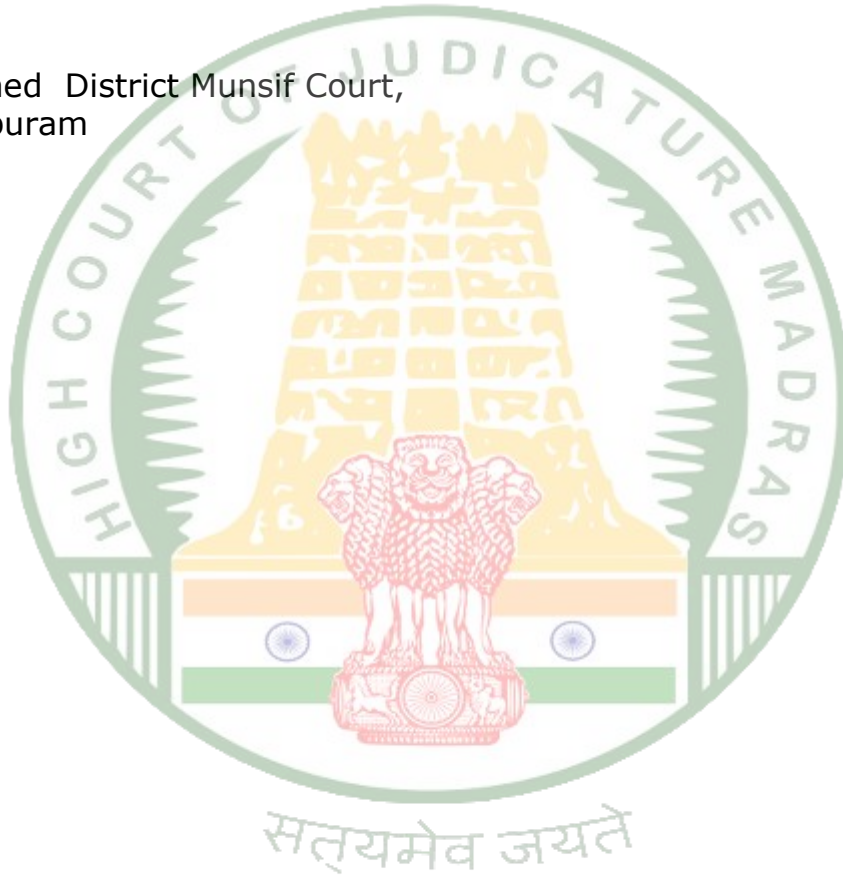
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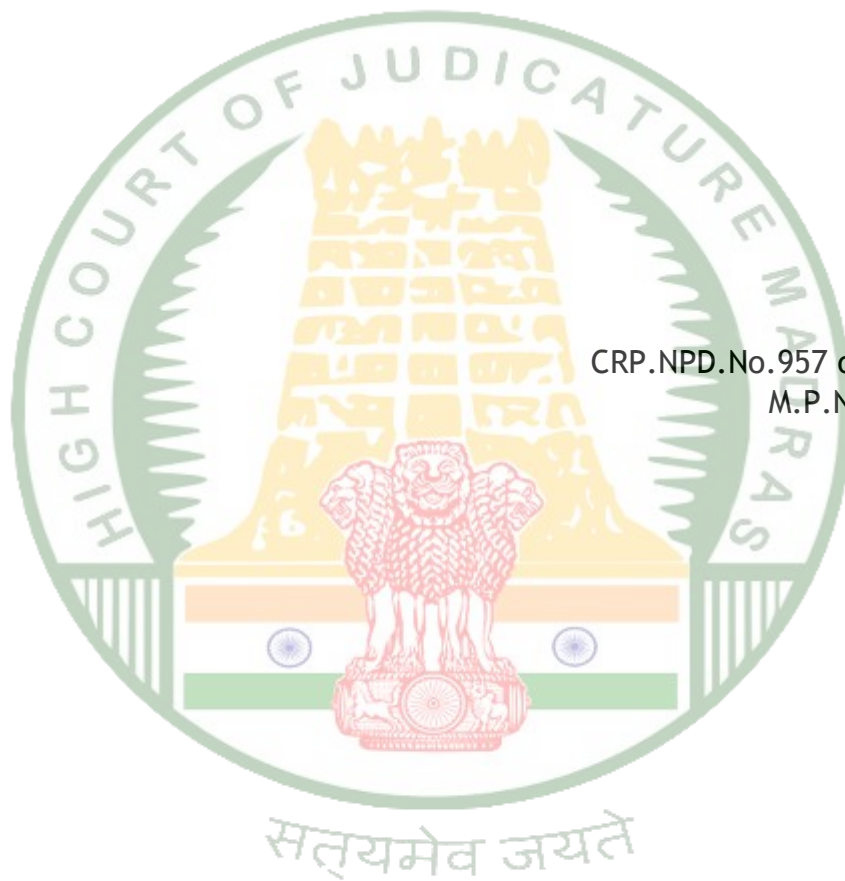
To
The learned District Munsif Court,
Sankarapuram



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R.PONGIAPPAN,J.

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