

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.04.2019
CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P.No.1026 of 2011

1. Arumugham
2. Minor.Poovarasi
3. Minor. Anbarasi
4. Minor.Sharmila

Minors 2 to 4 are represented
by Father and Natural Guardian ... Petitioners

Vs.

1. Sadayan @ Muthusamy
2. Sekar
3. Thangamani
4. Amudha
5. Mutharasu

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 17.09.2010 made in I.A.No.79/2010 in I.A.No.1683/2008 in O.S.No.152/2006 on the file of Principal District Munsif Court, Thirukoilur.

For Petitioners : Mr.P.Arivudainambi

For Respondents : Mr.V.Lakshmi Narayanan
for M/s.V.Ragavachari

O R D E R

This civil revision petition has been filed against the fair and decreetal order dated 17.09.2010 made in I.A.No.79/2010 in I.A.No.1683/2008 in O.S.No.152/2006 on the file of Principal District Munsif Court, Thirukoilur.

2. I.A.No.1683 of 2008 has been filed to review the order of the trial Court in dismissing the application filed to restore the suit which was dismissed for default on 05.09.2008 on the ground that the restoration application was filed within the time limit. However, while deciding the application, the

trial Court has concluded that the application has been filed beyond the period of limitation. The trial Court taking into consideration that the application has not been filed within a period of 30 days, dismissed the application, against which, the present revision is filed.

3. The brief facts leading to file the revision is as follows:

(i). The suit has been originally filed for partition. The suit was dismissed for default on 05.09.2008. The application filed under Order IX Rule 9, to restore the suit was dismissed for default on 05.09.2008 and Interlocutory Application viz., I.A.No.1683 of 2008 has been filed on 13.10.2008. The above application was dismissed by the trial Court on 03.12.2009 on the ground that the application was not filed within a period of 30 days and filed beyond the period of limitation.

(ii). Thereafter, I.A.No.79 of 2010 has been filed to review the above order on the ground that the application to restore the suit has been filed within a period of limitation. However, the trial Court has considered the application held that it was not filed within the time and dismissed the application.

4. It is to be noted that the suit was originally dismissed for default on 05.09.2008. The limitation to file an application to restore the said suit has to be filed on 04.10.2008. But the above application has been filed on 13.10.2008. The explanation for filing such application was that, between 03.10.2008 to 12.10.2008, there was a Dasara vacation for the trial Court, only on such impression, the application has been filed, immediately on the next working day.

5. The petitioner all along under the impression that Dasara vacation was extended to the Sub-Ordinate Courts from 03.10.2008 to 12.10.2008, but, the fact remains that the vacation declared for the Sub-Ordinate Court only from 07.10.2008 to 12.10.2008, in such circumstances, the application should have been filed on 04.10.2008.

6. It is the contention of the learned counsel appearing for the petitioner that under mistaken impression, he has filed the application by taken into consideration of the High Court holidays and filed the application only on 13.10.2008, which is admittedly beyond the period of 30 days. The trial Court while considering the application filed to restore the suit, dismissed the application on the ground that no Section 5 application accompanied review application which was also dismissed by the trial Court.

7. This Court is of the view that the suit itself is filed for partition. The rights of the parties in the immovable properties involved. The trial Court ought to have exercised its jurisdiction, after all, the application is filed few days delay that too under the mistake that the counsel has believed that the Dasara holidays are till 12.10.2008, whereas, the Subordinate Courts holiday's declared till 07.10.2008, the application has been filed mistakenly on the wrong belief. The trial Court ought to have exercised its jurisdiction and ought not have dismissed the application on the ground that application to condone the delay not filed. The parties cannot be deprived of their substantial right on mere technicalities. The trial Court should have considered the substantial justice and substantial rights of the parties and ought to have exercised its Judicial discretion. When substantial justice and technicalities pitted against each other, the substantial justice has to prevail over. The trial Court, in fact, failed to exercise its Judicial discretion properly.

8. Accordingly, I am of the view that in order to give a fair chance to the parties to establish their substantial rights, the civil revision petition is allowed and consequently, dismissal order in I.A.No.1683/2008 is set aside. The suit is ordered to be restored on file. The trial Court is directed to dispose of the suit as expeditiously as possible, not later than 8 months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msv

To

The Principal District Munsif,
Thirukoilur.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.V.Raghavachari, Advocate, Sr.No. 31282

+1cc to Mr.P.Arivudainambi, Advocate, S.R.No. 31931 (27/08/19)

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CSL/06.06.2019