

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.917 of 2012

1. Minor Mohan Kumar,
Rep. By his mother and natural guardian,
Ranganayaki.

2. Ranganayaki

.. Petitioners

Vs

1. Saraswathi
2. Babu
3. Geetha
4. Vijaya Lakshmi
5. P.N.Balaji
6. Sowdeswari

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the Fair and Decretal order dated 07.06.2011 made in I.A.No.99 of 2010 in Un numbered CMA No.--- of 2010, on the file of Principal Sessions Court, Salem.

For Petitioners : Mr.V.R.Rajasekaran

For Respondents : Mr.R.Babu (for R2, R3 & R6)
for Mr.B.Vijayakumar.
Mr.L.Mouli (for R5)
No Appearance (for R4)
R1 - Given up

ORDER

The petitioners, who are the appellants in unnumbered CMA ---/2010 on the file of the learned Principal District Judge, Salem, have filed the present Civil Revision Petition against the order dated 07.06.2011 passed by the learned Principal District Judge, Salem, in IA No.99 of 2010.

2. Before the trial Court, the petitioners herein filed an application under Order XXXIII Rule 1 of Code of Civil Procedure in P.O.P.No.67 of 2001, to declare them as indigent persons for filing the suit for the relief of partition and separate possession. The learned Principal Sub Judge, Salem, after affording opportunity to the respondents in the Civil Revision Petition, for raising their objections, by order dated 08.08.2009 dismissed the application filed by the petitioners, against which the petitioners intended to file the Civil Revision Petition before this Court.

3. Since Civil Revision Petition filed by the petitioner was returned by this Court, the revision petitioner preferred Civil Miscellaneous Appeal on the file of the learned Principal District Judge, Salem. Along with the Civil Miscellaneous Appeal, they filed an application in IA No.99 of 2010, under Section 5 of the Limitation Act and prayed to condone the delay of 198 days

in filing the appeal. But, the learned Principal District Judge, Salem, after hearing both sides, by order dated 7.6.2011 dismissed the said application. Aggrieved over the same the petitioners are before this Court, with this Civil Revision Petition.

4. Earlier, when the Civil Revision Petition came up for hearing, on 18.11.2019, the learned counsel appearing for the petitioners made a submission before this Court that the 1st petitioner viz., Mohan Kumar, has now attained majority. After recording the submission made by the learned counsel appearing for the petitioners, this Court directed him to take steps to declare minor 1st petitioner as major, by 21.11.2019 or else made clear that the Civil Revision Petition would be dismissed, automatically in respect of 1st petitioner. ***Accordingly, for the failure to take steps for declaring the 1st petitioner as major, the Civil Revision Petition is dismissed in so far as 1st petitioner is concerned.***

5. Further, considering the fact that the Civil Revision Petition is filed in the year 2012, this Court proceeds with the Civil Revision Petition in respect of the 2nd petitioner.

6. The learned counsel appearing for the 2nd petitioner, would

contend that only with bonafide belief the petitioner preferred a Civil Revision Petition before this Court, instead of filing Civil Miscellaneous Appeal, before the District Court, Salem and only because of the said reason, the Civil Miscellaneous Appeal has not been filed within time.

7. On the other hand, the learned counsel appearing for the respondents would contend that in the affidavit filed by the petitioners, they have not stated anything about the prayer sought for in the Civil Miscellaneous Appeal. The contentions raised by the petitioners that they have filed the Civil Revision Petition before this Court has not been substantiated with supporting documents. Thereby, only for the purpose of filing the Civil Miscellaneous Appeal the petitioners have invented the above reason and therefore, the delay requires to be condoned, cannot be entertained. In the impugned order, the learned Principal District Judge, Salem, has correctly concluded the same and dismissed the application and therefore, interference of this Court is not necessary.

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8. Now, on going through the impugned order passed, the Court below while at the time of dismissing IA No.99 of 2010, has observed that the petitioner lacks bonafides and the Revision Petition is not genuine. It

was further observed that the P.O.P.No.67 of 2001 filed by the petitioners was dismissed on 08.08.2009 and the Civil Revision Petition filed before this Court was returned on 11.01.2010. In the said circumstances, it is the duty of the petitioner to file an appeal immediately after 11.01.2010, the date on which this Court has returned the Civil Revision Petition. Whereas, without mentioning the correct date of delay, petitioners have filed application before the District Court, to condone the delay of 180 days and in the affidavit filed by the petitioners the delay to be condoned was mentioned as 198 days.

9. Though the reasons stated above for dismissing the delay condonation application by the learned Principal District Judge, Salem is correct one, considering the fact that the suit has been filed for the relief of partition and separate possession from the ancestral property, this Court is inclined to take note of the same, for deciding this Civil Revision Petition. Further, the delay of 180 days is not a huge one. Moreover, if the order dated 07.06.2011 is upheld by this Court, there may be a chance for the 2nd petitioner, losing her right, if any, in the suit property.

10. In this context, it is relevant to see the following judgments of

our Hon'ble Supreme Court.

(i) In ***Ram Nath Sao Alias Ram Nath Sahu and Another Vs. Gobardhan Sao and Others***, reported in (2002) 3 SCC 195, the Hon'ble Supreme Court held as under:

“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.”

(ii) In ***Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and Others***, reported in 2013 (12) SCC 649, the Hon'ble Supreme Court held as under:

"21.1 (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not

supposed to legalise injustice but are obliged to remove injustice."

11. So, applying the above said principles laid down by our Hon'ble Apex Court to the case on hand and further considering the fact that the suit is filed for the relief of partition and separate possession from the ancestral property, this Court is of the opinion that elaborate trial is necessary for determining the right of the parties. Otherwise, dismissing the application filed by the petitioner before the trial Court, would cause much prejudice to the petitioner. Since, this aspect was not taken note of by the the learned Principal District Judge, Salem, the impugned order warrants interference of this Court.

12. Accordingly, the order dated 07.06.2011 passed by the learned Principal District Judge, Salem, in IA No.99 of 2010, is set aside. Delay in filing the Civil Miscellaneous Appeal is condoned and the learned Principal District Judge, Salem, is directed to number the Civil Miscellaneous Appeal.

13. Further, since the P.O.P. is filed in the year 2001, it is necessary for this Court to issue some directions to the learned Principal District Judge, to dispose of the Civil Miscellaneous Appeal, within a specific date.

Accordingly, the learned Principal District Judge, Salem, is directed to post the Civil Miscellaneous Appeal on a day-to-day basis and dispose of the same within a period of three months from the date of receipt of this order, without being influenced by the observation made in this order.

14. With the above directions, the Civil Revision Petition is allowed, in respect of the 2nd petitioner. No Costs.

21.11.2019

Speaking/Non-speaking order
Index: Yes/No
Internet: Yes
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To
The Principal District Court, Salem.



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R.PONGIAPPAN, J.,

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