

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 14.02.2019****CORAM****THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR****CRP NPD NO.2567 of 2013 and**

1. Visalakshi
2. M/R.Hariraman
3. R.Ragu Raman ... Revision Petitioners

Vs.

1. The District Collector,
Dharmapuri
Now at Krishnagiri
2. Thsildar, Krishnagiri,
Now Pochampalli
3. Revenue Inspector,
Nagarasampatti
Pochampalli Taluk ... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the decree and judgment dated 23.10.2008 passed by the Principal Subordinate Judge, Krishnagiri, in C.M.A.No.16 of 2005 upholding the fair and decreetal order dated 20.06.2005 passed by the District Munsif, Pochampalli in I.A.No.87 of 2005 in O.S.No.49 of 2000.

For Revision Petitioners : Mr.K.Krishnaprasad

For Respondents : No appearance.

ORDER

Revision petition filed against the decree and judgment passed by the first appellate court in C.MA.No.16 of 2005, upholding the orders passed by the trial court in I.A.No.87 of 2005 in O.S.No.49 of 2000, dismissing the application filed to restore the suit, which was dismissed for default on 12.02.2002.

2. The Revision petitioners are the plaintiffs in O.S.No.49 of 2000. The trial court dismissed the restoration petition filed by the revision petitioners on the ground that the delay has not been explained properly and petition under Section 5 of Limitation Act has not been filed. The first appellate court has also confirmed the orders passed by the trial court. Against which, the revision petitioners came up with this present revision.

3. Heard the learned counsel appearing for the revision petitioners. There is no representation for the respondents, though their names are printed in the cause list.

4. The suit has been filed against the defendants for declaration of their title to the suit property and also for permanent injunction. When the suit was posted on 12.2.2002 for cross continuation of PW1, the counsel for the petitioners was present.

However, the suit was dismissed for default. Thereafter, the petitioners filed restoration petition, but the same was returned and that application was re-presented with delay. Again it was returned and re-presented after some delay. The delay in re-presentation had been condoned by the court and finally the application was numbered. Thereafter, on merit, it was dismissed on the ground that without application to condone the delay, the restoration petitioner is not maintainable.

5. Admittedly, the application to restore the suit was filed as early as on 18.02.2002 i.e. within one week from the date of order, dismissing the suit for default. Of-course, it appears that the above application was returned for some defect and re-presented with some delay. After that, it was numbered. When the restoration application itself was accepted to be numbered, the delay for re-presentation has also been condoned. Hence, it should be construed that the restoration application has been filed within a period of limitation. Whereas, the courts below have dismissed the application mainly on the ground that such restoration application was not accompanied with supporting application under Section 5 of the Limitation Act. The order of the trial court is not as per law, as the petition is filed in time and the delay in re-presenting such application also being condoned by the court. Hence, there is no

need to file supporting application under Section 5 of the Limitation Act. Hence, this court is of the view that the orders of the courts below suffered by serious infirmity and illegality and the same were interfered with by this court.

6. In the result,

(i) The Civil Revision Petition is allowed. No costs.

(ii) The fair and final order of the first appellate court as well as the fair and decretal order of the trial court are set aside.

(iii) The trial court is directed to dispose the suit within three months from the date of receipt of a copy of this order.

14.02.2019

Index : Yes / No
Internet : Yes / No
speaking/non speaking
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To

WEB COPY

1. The Principal Subordinate Judge, Krishnagiri
2. The District Munsif, Pochampalli.

N.SATHISHKUMAR, J.
mst



CRP NPD No.2567 of 2013 and

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Date: 14.02.2019