

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.3326 of 2014

Chennappan

Petitioner

Vs

- 1.Vajjiram
- 2.Gopal
- 3.The Village Administrative Officer,
Thekkupattu village,
Vaniyambadi Town,
Vellore District.
- 4.The Block Development Officer
Ambalur Village,
Vaniyambadi Town,
Vellore District.
- 5.The Tahsildar,
Taluk Office,
Vaniyambadi town,
Vellore District.
- 6.The District Collector,
Sathuvachari, Vellore,
Vellore District.

Respondents

PRAYER: Civil Revision Petition filed under Article 115 of the Civil Procedure Code against the judgment and decreetal order in I.A.No.799 of 2013 in I.A.No.168 of 2012 in O.S.No.170 of 2009, on

the file of the Additional District Munsif Court, Vaniyambadi, dated 17.06.2014.

For Petitioner	: Ms.R.Sripriya for Mr.V.Raghavachari
For R1 & R2	: Mr.P.A.Sudesh Kumar
For R3 to R6	: No Appearance

ORDER

This Revision is against the order passed in I.A.No.799 of 2013 in I.A.No.168 of 2012 in O.S.No.170 of 2009 on the file of the Additional District Munsif Court, Vaniyambadi.

2 Before the trial Court, the petitioner/plaintiff filed a suit as against the respondents/defendants seeking the relief of declaration, declaring that the suit schedule property is his absolute property, and for consequential injunction. After filing the written statement by the defendants, issues have been framed and the suit was listed for final disposal on 08.12.2010. Thereafter, the suit was adjourned from time to time and on 18.01.2011, proof affidavit of P.W.1 filed and since the plaintiff has not appeared, the suit was adjourned and at last the suit was dismissed for default on 22.02.2011.

3 Immediately the petitioner herein filed an application in I.A.No.303/2011 praying to restore the suit. The said application filed by the petitioner was allowed and the suit was restored on file on 13.02.2012. Again when the suit was listed for trial, the petitioner has failed to appear and on 26.03.2012, the suit was dismissed for default. For restoring the suit, again the very same petitioner filed one another Interlocutory Application in I.A.No.168 of 2012, subsequently during the time, when the said application was posted for enquiry, due to the absence of petitioner the same was dismissed for default on 11.07.2013. In the said circumstances for restoring the said I.A.No.168 of 2012, the petitioner herein filed application in I.A.No.799 of 2013 under Section 5 of Limitation Act, 1963, to condone the delay of 107 days.

4 The learned Additional District Munsiff, Vaniyambadi, after affording an opportunity to the respondents dismissed the application filed by the petitioner by saying that only by having lethargic attitude in pursuing the case, the petitioner intentionally filed the petition with a delay. For the said delay, he relied on the judgment rendered by our Honourable Apex Court reported in **(2010) 5 SCC 459 (Oriental Aroma Chemical Industries Ltd. V. gujarat Industrial Development Corporation)** and Judgment reported in

(1998) 7 SCC 122 (N.Balakrishnan V. Krishnamoorthy) . It is true, both the judgment referred by the trial Judge, our Honourable Apex Court has held that Rules of Limitation are not meant to destroy the right parties. They are meant to see that parties do not resort to dilatory tactics, but seek remedy promptly.

5 Taking note of the principle laid down by our Honourable Apex Court in the case in our hand, the delay to be condoned is merely 107 days in filing the petitioner to restore I.A.NO.168 of 2012. In fact the said delay is not a huge one. Since the petitioner has projected his case before the trial Court without assigning any specific reason the trial judge dismissed the petition.

6 In this occasion, it is to be noted that the suit has been filed by the plaintiff for the relief of declaration and consequential injunction. On a perusal of the plaint schedule, it is seen that the suit properties appear to be 4 to 5 acres.

7 On going through the judgment rendered by our Honourable Apex Court referred to supra, I am of the view that there is no dilatory tactics on the part of the petitioner. In such circumstances, since the suit is filed for the relief of declaration, I am

of the opinion that proceeding with the trial is necessary to determine the right and interest of parties. However, considering the lapses committed by the petitioner it would be appropriate to impose cost Rs.10,000/- payable by the petitioner to the respondents. Accordingly, the petitioner is directed to pay a cost of Rs.10,000/- to the respondent immediately within a period of two weeks from the date of receipt of a copy of this order.

8 In the result, this Civil Revision Petition is allowed in terms aforesaid.

05.09.2019

sbn

To

1. The Additional District Munsif Court,
Vaniyambadi.

C.R.P.(NPD)No.3326 of 2014

R.PONGIAPPAN, J.,
sbn

C.R.P.(NPD).No.3326 of 2014

05.09.2019