

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.4527 of 2014
& M.P.No.1 of 2014

1. Thimman
2. Sudiammal
3. Saravanan
4. Thangamani
5. Venkatesan
6. Govindaraj

.... Petitioners

Vs

1. Parvathi
2. Venkatammal

.... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order and decree dated 20.12.2013 made in I.A.No.900 of 2012 in I.A.No.81 of 2002 in O.S.No.188 of 1999 on the file of the District Munsif Court, Palacodu by allowing this Civil Revision Petition.

For Petitioners : Mr.V.R.Annagandhi
For Respondents : No appearance

ORDER

Aggrieved over the order dated 20.12.2013, passed in I.A.No.900 of 2012 in I.A.No.81 of 2002 in O.S.No.188 of 1999 by the learned District Munsif, Palacodu, the petitioners, who are the defendants in the above referred suit, filed the present Civil Revision Petition.

2. Before the trial Court, the respondents in this revision petition filed a suit in O.S.No.188 of 1999 and sought for the relief of declaration declaring that the respondents are the absolute owners of the suit schedule property. Further they have prayed the relief of permanent injunction restraining the defendants/petitioners in interfering with the plaintiffs'/ respondents' peaceful possession and enjoyment of the suit property.

3. During the pendency of the suit, since the petitioners were not appeared before the trial Court, the learned District Munsif, Palacodu, on 27.08.2001, passed an exparte decree against the petitioners. Immediately after passing an exparte decree, the petitioners herein filed an Interlocutory Application in I.A.No.81 of 2002 and prayed to set aside the exparte decree passed against them. On 06.09.2002, when the said application was posted for payment of batta by the petitioners, for sending summons to the respondents, the petitioners herein not paid the batta. Hence, the Interlocutory application filed the petitioner was dismissed for default. After several years from the date on which the dismissal order was passed in I.A.No.81 of 2002, in fact after filing an Execution Petition in E.P.No.2 of 2012 by the respondents, the petitioners herein filed an application in I.A.No.900 of 2012, under Section 5 of Limitation Act and prayed to condone the delay of 3558 days in filing an application to set aside the dismissal order.

4. The learned District Munsif, Palacodu, after affording opportunity to the respondents/plaintiffs, by an order dated 20.12.2013, dismissed the said application filed by the petitioners, by observing that the petitioners have not projected sufficient cause to condone the delay of 3558 days. Aggrieved over the said findings, the petitioners/defendants are before this Court, with the present Civil Revision Petition.

5. Today when this petition is taken up for hearing, the learned counsel appearing for the petitioners alone present. There was no representation on the side of the respondents.

6. The learned counsel appearing for the petitioners has projected his case in two folds. First of all, he has made allegations against the counsel on record, who appeared on behalf of the petitioners before the trial Court. Secondly, he made a submission that since the petitioners are suffering from jaundice, neck pain and back pain, they are not known about the orders passed by the trial Court. In other words, there is no intention on the side of the petitioners to prolong the proceedings.

7. The submissions made by the learned counsel appearing for the petitioners are considered.

8. The delay requires to be condoned is 3558 days, which is approximately, ten years. If the counsel on record committed mistake, there was an option available to the petitioners to lodge complaint before the Bar Council of Tamil Nadu for the misconduct committed by the Advocate. But in this case, the learned counsel appearing for the petitioners fairly concedes that the petitioners are not intended to lodge complaint against the Advocate. It creates doubts that whether the counsel, who was appeared before the trial Court, is the reason for filing this petition belatedly.

9. In respect of the second submission made by the learned counsel appearing for the petitioners, even assuming that the first petitioner, who filed an affidavit was suffering from illness as stated in the affidavit, the other petitioners 2 to 6 were having opportunity to file an application before the trial Court after mentioning the reasons. In this case, the other petitioners have not taken any steps for filing an application in due time. More than that, the second submission made by the learned counsel appearing for the petitioners is also not supported with the relevant documents.

10. On perusal of the order passed by the learned District Munsif, Palacodu, the learned Judge has observed that even after knowing the dismissal order passed by this Court, the petitioners were lethargically approached the trial Court and therefore, the petition filed by the petitioners

are not having any merit. In fact in the said order, the learned Judge has clearly stated that the petitioners have not filed written statement even after lapse of 23 months. In fact, granting of 23 months for filing written statement is not in accordance with the Civil Procedure Code. So in each and every stage the petitioners have not projected their case with sufficient cause. Therefore, for the reasons stated above, this Court is not inclined to interfere with the findings of the trial Court.

11. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

30.09.2019

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order

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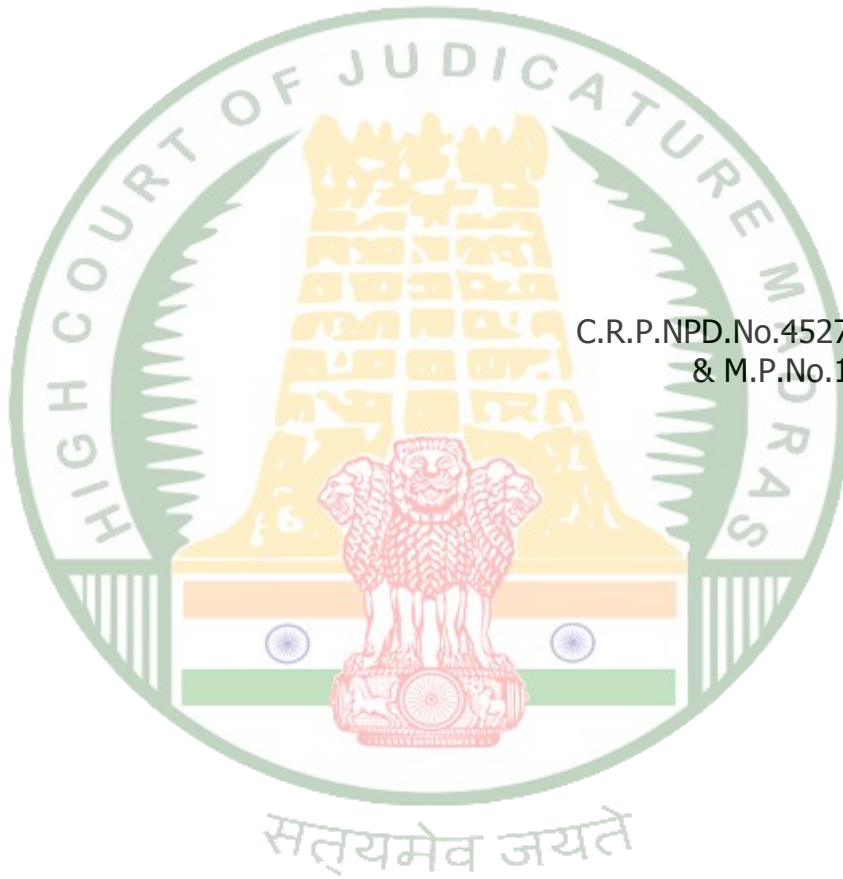
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R.PONGIAPPAN, J.

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To,

The District Munsif Court,
Palacodu.



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