

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) Nos.4574 and 4575 of 2014
and
M.P.No.1 of 2014

1. G.Akbar
2. G.Nizar
3. G.Khadar
4. Jarina

Petitioners in both CRPs

Vs

P.G.Yakub

Respondent in both CRPs

COMMON PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal orders dated 08.10.2014 passed in I.A.Nos.159 and 160 of 2013 in O.S.No.99 of 2010 on the file of Additional District Court, Krishnagiri.

For Petitioners in both CRPs : Mr.P.Mani

For Respondent in both CRPs : Mr.K.Ramesh Kumar for
Mr.P.M.Duraiswamy

COMMON ORDER

The petitioners herein are the defendants 2 to 4 and 6 in OS No.99 of 2010 on the file of Principal District Court, Krishnagiri. Before the trial Court, the respondent in this Civil Revision Petition has filed a Suit in OS No.99 of 2010 as against the present petitioners and others, seeking the relief of partition and separate possession.

2. During the pendency of the said suit, the petitioners herein have filed applications in I.A.Nos.159 and 160 of 2013, under Section 5 of Limitation Act and prayed to condone the delay of 314 days in filing the application to set aside the Exparte decree dated 31.07.2012. The learned Additional District Judge, after affording opportunity to the first respondent herein has dismissed the petitions filed by the revision petitioner.

3. Aggrieved over the said order dated 08.10.2014, the present petitioners are before this Court with this Civil Revision Petition.

4. The learned counsel appearing for the petitioner in both Civil Revision petitions would contend that the learned counsel who is on record, on behalf of petitioners has not informed the date, on which the case is posted for trial. When at the time the petitioner contacted the counsel, the counsel told to them that the case records were misplaced with other records. The learned counsel further submitted that only in the said circumstances, the delay of 314 days had occurred. It is further submitted that since the Suit is filed for the purpose of determining the rights of the party, the appearance of the party before the trial Court is very much necessary and accordingly prayed to allow the application.

5. Per contra, the learned counsel for the respondent would contend that in the affidavit filed in support of the petition to condone the delay of 314 days, the petitioner has not projected any sufficient cause to condone such delay. The learned counsel further submitted that each and every day of delay should be explained with proper reasons. But, before the trial Court, the same has not been done so by the petitioner. Only for the said reasons, the learned Additional District Judge has dismissed the petition filed by the petitioner. Hence, there is no need to interfere with the orders passed by the trial Court.

6. Upon considering the arguments advanced by either side, it is true that in the affidavit filed in support of the petition, the petitioner has stated only at the time, when the notice was received in IA No.120 of 2013, which is filed for passing of final decree, they came to know the details about passing of the preliminary decree. In this regard, the petitioner has stated that only the Advocate, who engaged at earliest occasion before the trial Court had committed mistake and not informed the proceedings then and there. In fact, the said reason stated by the petitioner is not substantiated with the relevant document. However, on going through the written statement filed by the defendant before the trial Court, it was the contention raised by the defendant that the the plaintiff got properties through sale and Gift deeds. According to the petitioner, the plaintiff has no right over the suit properties. Further, it is a case of the defendant that the plaintiff is not in the joint possession.

7. Now on going through the stand taken by the defendants before the trial Court, they have disputed the title of the plaintiffs. In otherwise, in the plaint filed by the 1st respondent before the trial court, he has admitted the entitlement of the defendants in the suit schedule properties. Hence, for the determination of the right having by either party, trial is necessary. In otherwise, the delay of 314 days is not a long delay. Further, I am of the opinion that in the said occasion referred above, specifically for determination of right, allowing the application is very much necessary.

8. In view of the above discussions, the orders dated 08.10.2014, passed by the learned Additional District Judge, Krishnagiri in I.A.Nos.159 and 160 of 2013 in O.S.No.99 of 2010 is hereby set aside and these Civil Revision Petitions are allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

vrn

16.09.2019

To

The Additional District Court, Krishnagiri.

WEB COPY

R.PONGIAPPAN, J.,

vrn



Civil Revision Petition (PD) Nos.4574 and 4575 of 2014
and
M.P.No.1 of 2014

WEB COPY

16.09.2019