

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.4940 of 2014
and
M.P.No.1 of 2014

R.Sumathi

.. Petitioner

Vs

1. P.Sivapriya
2. P.Rajasekar
3. Ganeshwari
4. Krishnan
5. Rangasamy
6. Sivaraj

.. Respondents

[R2 and R4 remained exparte before the trial Court. Hence, notice is dispensed with for R2 and R4]

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 19.07.2013 made in I.A.No.462 of 2010 in O.S.No.755 of 2002 on the file of First Additional Subordinate Court, Coimbatore.

For Petitioner : Mr.S.C.Vishwanth

For Respondents : Mr.P.Muthukrishnan (for R1)
Mr.R.Vinoth Raja (for R5 & R6)
for Mr.N.Manokaran
No appearance (for R3)

ORDER

Aggrieved over the order dated 19.07.2013 passed in IA No.462 of 2010 in OS No.755 of 2002 on the file of the learned First Additional Subordinate Judge, Coimbatore, the petitioner herein, who is the 2nd defendant in the said suit has filed this Civil Revision Petition.

2. Before the trial Court, 1st respondent in this Civil Revision petition, filed a suit in OS No.755 of 2002 as against this revision petitioner and others viz., respondent Nos.2 to 6, seeking the relief of declaration, declaring that the plaintiff is the absolute owner of the suit mentioned property, as per the sale deed dated 23.06.2000, executed by the 1st Defendant viz., P.Rajasekaran. Consequently, she has prayed for the relief of injunction restraining defendants 2 to 6 therein and their men, from interfering with her physical possession and enjoyment.

3. After receiving the written statement from the revision petitioner / 2nd defendant, when the suit was posted for trial, the 1st respondent herein / plaintiff had not appeared before the trial Court. Hence, by an order dated 03.02.2005, the learned First Additional Subordinate Judge, Coimbatore, dismissed the suit without costs.

4. Consequent to the dismissal of the said suit, the 1st respondent herein / plaintiff filed an application under Section 5 of the Limitation Act, in which, he prayed to condone the delay of 2002 days in filing the application to restore the suit.

5. The learned First Additional Subordinate Judge, Coimbatore, after affording an opportunity to the respondents in that application, by an order dated 19.07.2013, allowed the application and condoned the delay in filing the application to restore the suit.

6. Being aggrieved over the same, the petitioner/2nd defendant is before this Court, with the present Civil Revision Petition praying to set aside the order dated 19.07.2013 made in IA.No.462 of 2010 in O.S.No.755 of 2002.

7. Initially, in the affidavit filed by the 1st respondent herein/plaintiff before the learned First Additional Subordinate Judge, Coimbatore, she has stated that though it was informed by her counsel that the suit was listed for trial on 03.02.2005, due to the reason that her son B.Rajeshkanna, a meritorious student doing 1st year Engineering in Sri

Venkateswara College of Engineering, Sriperumpudur, has died in a road accident on 24.08.2002, she was not in a position to appear before the Court. Further she has stated that after the death of her son, she has also been admitted in Ganga Hospital and underwent a major surgery. Only because of the said reasons, the Application to restore the suit is not filed within the time stipulated under the Act.

8. Resisting the claim made by 1st respondent herein/plaintiff, the revision petitioner / 2nd defendant filed a counter affidavit in which, she has denied the allegations set out in the affidavit. In the counter affidavit, she has further stated that the 1st respondent herein/plaintiff has mentioned invalid reasons. According to her, the reasons stated by the 1st respondent before the trial Court, is not substantiated with relevant documents.

9. According to the revision petitioner / 2nd defendant, in respect of the suit property pertaining to this Civil Revision Petition, she had already filed a suit on the file of the II Additional District Munsif, Coimbatore in OSA No.1817 of 2004, for the relief of declaration and consequential permanent injunction as against the 1st respondent herein / plaintiff, her husband R.Balamurugan and P.Rajasekaran, 2nd respondent herein. The said suit

was decreed on 08.12.2006 in favour of the revision petitioner / 2nd defendant.

10. In the said circumstances, today when the Civil Revision Petition came up for hearing, the learned counsel appearing for the revision petitioner / 2nd defendant filed a memo stating that respondent Nos.2 and 4 in the Civil Revision Petition, remained exparte before the trial court and hence, notice is not necessary to them. The memo filed by the revision petitioner / 2nd defendant is recorded. In otherwise, the learned counsel appearing for the revision petitioner/2nd defendant would contend that the delay condoned by the learned First Additional Subordinate Judge, Coimbatore, is without appreciating the fact that the 1st respondent/plaintiff has not produced the relevant documents to show her bonafide and mechanically allowed, which is necessarily to be set aside.

11. Per contra, the learned counsel appearing for the 1st respondent/plaintiff would contend that no person would say that her son died, for the purpose of filing this type of applications.

12. The submissions made by the learned counsel appearing on either side are considered.

13. On going through the impugned order passed by the Courts below, the learned First Additional Subordinate Judge, liberally came to the conclusion that only because of the reason that the son of the 1st respondent herein / plaintiff, died in the road accident and also due to the reason that she was admitted in the hospital, the delay has occurred.

14. Now on going through the arguments advanced by the revision petitioner / 2nd defendant, it is true that the reasons stated by the 1st respondent/plaintiff is not substantiated by producing documents relating to the death of her son and also in respect of the treatment taken by her in Ganga Hospital. However the suit pertaining to the Civil Revision Petition is filed for the relief of declaration.

15. On the other hand, it is the case of the revision petitioner/2nd defendant that already a decree has been granted in her favour, for the same suit property. So without seeing the documents relied on by the 1st respondent/plaintiff and also without seeing the documents relied on by the

revision petitioner/2nd defendant, it cannot be appropriate to decide who is the title holder to the suit property. If the said situation is not crossed, there may be a chance for initiating some other proceedings in respect of the same issue. In this context, it is relevant to see the following judgments of the 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."

16. So, as per the principles laid down by our Hon'ble Apex Court, since the suit is filed for the relief of declaration, I am of the opinion that elaborate trial is necessary for determining the right of the parties in the property relating to the suit. However, considering the fact that the application filed before the trial Court, is to condone the delay of 2002 days, it is appropriate to impose some costs on the 1st respondent/plaintiff, payable to the revision petitioner/2nd defendant.

17. In the light of the above submissions and the decisions quoted supra, Civil Revision Petition is dismissed, with the condition that the 1st respondent/plaintiff shall pay a sum of Rs.10,000/- [Rupees Ten Thousand only] to the revision petitioner/2nd defendant. It is made clear that if costs, is not paid within a period of two weeks from today, the order dated 19.07.2013 made in I.A.No.462 of 2010 in O.S.No.755 of 2002 on the file of

First Additional Subordinate Court, Coimbatore, is set aside.

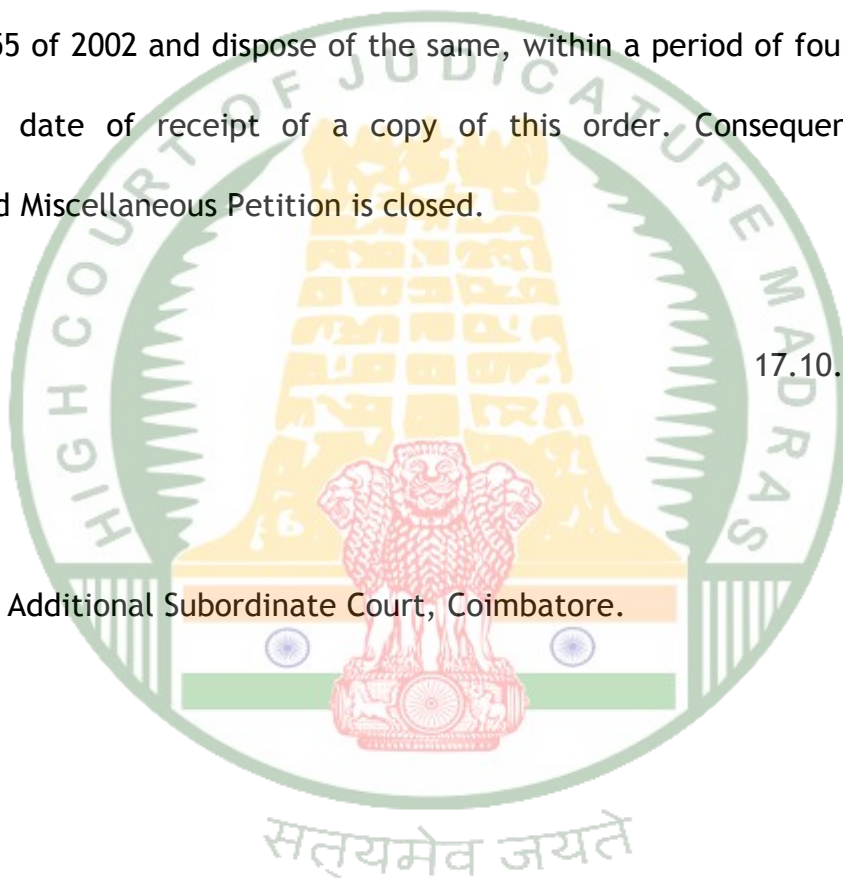
18. Further, on such payment of costs, the learned First Additional Subordinate Judge, Coimbatore, is directed to restore the suit in O.S.No.755 of 2002 and dispose of the same, within a period of four months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

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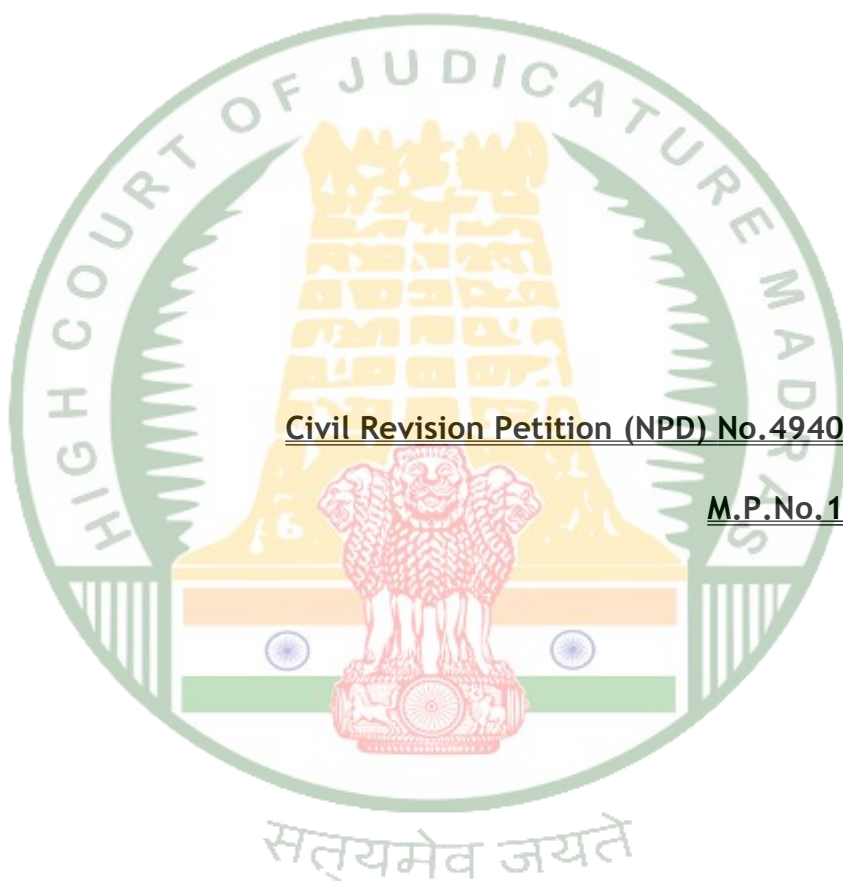
The First Additional Subordinate Court, Coimbatore.



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R.PONGIAPPAN, J.,

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