

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.10.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(NPD)No.1973 of 2014

1.Saraswathi @ Rasayee

2.Karuppayee

..

Petitioners / Plaintiffs

versus

1.Karuppanasamy

2.Krishnan

3.Venkatachalam

..

Respondents / Defendants

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 02.04.2014 made in I.A.No.17 of 2014 in O.S.No.53 of 2011 on the file of the Sub Court, Perundurai.

For Petitioners : Mr.N.Manokaran

For Respondent Nos.1 & 3 : No Appearance

ORDER

This Civil Revision Petition has been preferred as against the order dated 02.04.2014 made in I.A.No.17 of 2014 in O.S.No.53 of 2011 on the file of the learned Subordinate Judge, Perundurai.

2. Before the trial Court, the plaintiffs, who are the petitioners herein had filed a Suit in O.S.No.53 of 2011, as against the respondents/defendants, for the relief of partition and separate possession. In the said suit, after receiving summons, all the defendants have entered appearance and filed written statement.

3. On 07.01.2013, when the suit was posted for trial, the petitioners had not appeared and hence, the learned Subordinate Judge, Perundurai, dismissed the suit. Subsequent to that, on 09.01.2013, both the petitioners herein had prepared an Application under Order 9 Rule 9 of the Code of Civil Procedure and seeks the relief to set aside the dismissal order. The said Application was returned by the Registry after pointing out some mistakes, which was not complied with by the petitioners.

4. Only in the above said circumstances, the petitioners had filed another Application in I.A.No.17 of 2014, seeking to condone the delay of 216 days in representing the Application.

5. The learned Subordinate Judge, Perundurai, after affording an opportunity to the respondents, by an order dated 02.04.2014, dismissed the

Application filed by the petitioners, by observing that the petitioners had not stated any specific reason for the delay of 216 days in representing the Application.

6. Aggrieved over the said findings, the petitioners are before this Court with the present Civil Revision Petition.

7. In respect to the respondents, this Court ordered notice and after receiving the same, they have not turned up for resisting the claim made by the petitioners. Hence, their names alone printed in the cause list.

8. Today when the Civil Revision Petition is taken up for hearing, the learned counsel appearing for the petitioners is present and would contend that, since the suit was filed for the relief of partition and separate possession, the order of dismissal has entirely taken the rights of the petitioners, through which, they lost the entire title over the suit property.

9. I have considered the submission made by the learned counsel appearing for the petitioners.

10. It is true that the suit was filed for the relief of partition and separate possession, it is necessary to decide whether the party to the proceedings are having the right of title over the suit property. For deciding the said issue, elaborate trial is necessary.

11. On the other hand, the delay to be condoned is only 216 days, which cannot be held as the said delay is a long one. Furthermore, the petitioners had filed the Application under Order 9 Rule 9 of the Code of Civil Procedure, within a period of limitation. However, the learned Subordinate Judge, dismissed the Application, merely saying that the petitioners have not stated any specific reason for the delay of 216 days.

12. In this occasion, it is relevant and useful to consider the judgment of our Hon'ble Apex Court in **ROBIN THAPA vs. ROHIT DORA** reported in (2019) 7 SCC 359, in which, it has held as follows;

“7. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

13 Further, in the case of **RAM NATH SAO vs. GOBARDHAN SAO** reported in (2002) 3 SCC 195, in which, our Hon'ble Apex Court has observed as follows;

“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.”

14. Accordingly, following the principles laid down by our Hon'ble Apex Court in the above referred judgments, for rendering substantial justice to the parties, elaborate trial is necessary. Further, it is appropriate to see the counter filed by the third respondent, in which, he has stated that some other suit is pending in respect to the title now claimed by the petitioners. So,

deciding the suit filed by the petitioners, is the only remedy to determine the rights of either parties.

15. For the foregoing reasons, the order dated 02.04.2014 passed by the learned Subordinate Judge, Perundurai, is hereby set aside. Considering the fact that the suit is pending from the year 2011, the learned Subordinate Judge, Perundurai, is directed to dispose of the suit in O.S.No.53 of 2011 as early as possible, preferably within a period of six (6) months from the date of receipt of a copy of this order.

16. With the above discussions, the Civil Revision Petition stands allowed. However, there shall be no order as to costs.

14.10.2019

Speaking Order/Non Speaking Order

Index : Yes / No

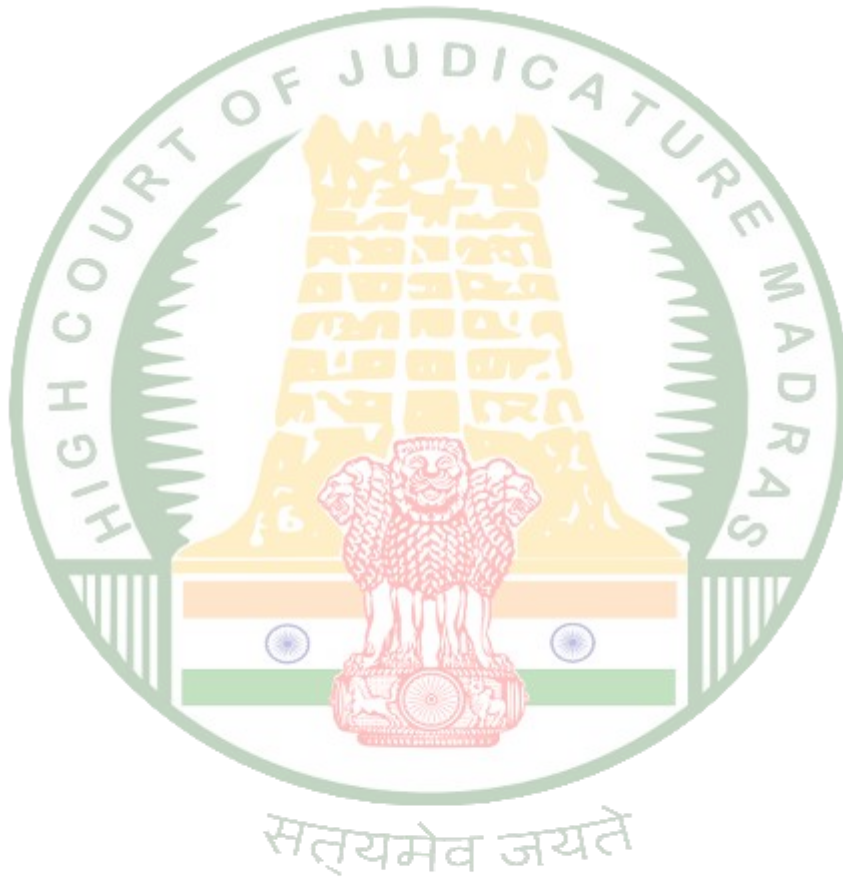
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To

The Subordinate Judge,
Perundurai.



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R.PONGIAPPAN, J.,
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