



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

CRP.(MD) Nos.1576 & 1577 of 2012 (NPD)

A.Selvam

... Petitioner/Petitioner/2nd Defendant
in both CRPs

-VS-

1. A.Rasu
2. A.Ponnadaikkan
3. V.Kuppachi
4. K.Rajarajan

... Respondents/Respondents/Plaintiffs
in both CRPs

PRAYER in CRP.(MD) No.1576 of 2012: Petition is filed under Section 115 of Code of Civil Procedure to allow the Civil Revision Petition and set aside the order dated 20.04.2012 made in I.A.No.6 of 2011 in O.S.No.109 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Natham.

PRAYER in CRP.(MD) No.1577 of 2012: Petition is filed under Section 115 of Code of Civil Procedure to allow the Civil Revision Petition and set aside the order dated 20.04.2012 made in I.A.No.7 of 2011 in O.S.No.109 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Natham.

For Petitioner : Mr.PT.S.Narendravasan
(in both cases)

For Respondents : Mr.H.Lakshmishankar
(in both cases)

C O M M O N O R D E R

The Civil Revision Petition in CRP.(MD) No.1576 of 2012 has been filed, challenging the judgment and decree dated 20.04.2012 passed by the District Munsif-cum-Judicial Magistrate, Natham in I.A.No.6 of 2011 in O.S.No.109 of 2009, by which, the condone delay petition was dismissed. Similarly, in CRP.(MD) No.1577 of 2012, the petitioner has sought to set aside the exparte order dated 20.04.2012 made in I.A.No.7 of 2011 in O.S.No.109 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Natham.



2. It is the case of the petitioner / 2nd Defendant in the suit that the Plaintiffs had filed the suit for permanent injunction, restraining the Defendants therein to interfere with the peaceful possession of the suit schedule property and the said suit was decreed in favour of the plaintiffs, pursuant to the non-appearance of the petitioner / 2nd defendant before the Court below. It is the further case of the petitioner / 2nd Defendant that since he suffered from jaundice, he could not file the written argument before the Court, which resulted in the Court passing an ex parte decree against him. After recovery from the illness, he came to know of the factum of ex parte decree through his Advocate on 02.01.2011 and in the interregnum period, there occurred a delay of 82 days, which is neither wanton nor wilful. Hence, it is stated that if the delay is not condoned, much hardship would be caused to the petitioner herein and therefore, prayed for setting aside the order of the Court below.

3. Learned counsel for the respondents / plaintiffs has submitted that though the respondents / plaintiffs have no objection in condoning the delay, the petitioner / 2nd Defendant is in the habit of dragging on the proceedings and therefore, he should be put on severe terms so as to enable him to participate in the proceedings in future without fail.

4. Taking into consideration the rival submissions, more particularly, the contention of the learned Counsel for the respondents/plaintiffs, this Court is inclined to allow the petition in CRP.(MD) No.1576 of 2012 filed to condone the delay of 81 days. Accordingly, the said petition is allowed and the delay is condoned. In view of setting aside of the judgment and decree passed in I.A.No.6 of 2011 in O.S.No.109 of 2009 by the District Munsif-cum-Judicial Magistrate, Natham, the petition filed in CRP.(MD) No.1577 of 2012, seeking to set aside the order dated 20.04.2012 made in I.A.No.7 of 2011 in O.S.No.109 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Natham is also allowed, thereby the suit is restored.

5. It is made clear that since the suit is of the year 2009, the petitioner / defendant shall appear before the Trial Court on all the hearings and shall not take any adjournment. The Trial Court, in turn is directed to proceed with the matter on day-to-day basis without adjourning the matter beyond seven working days at any point of time and bring the issue to a logical end as expeditiously as possible, as the suit is more than 10 years old. In case of any adjournment sought for by the petitioner herein, who is the 2nd defendant in the suit, it is open to the Court below to impose a cost of Rs.500/- (Rupees Five Hundred only) on the petitioner herein for each hearing. If there is any continuous adjournment on the part of the petitioner / 2nd defendant for more than three occasions, the



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cost will be at Rs.1,000/- (Rupees One Thousand only) for each hearing, so as to ensure speedy disposal of the suit. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

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To:

The District Munsif-cum-Judicial Magistrate,
Natham.

+1cc to Mr.H.Lakshmishankar, Advocate Sr.No.102526

+1cc to Mr.PT.S.Narendravasan, Advocate Sr.No.102464

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VB (02.01.2020) 3P 4C