



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED:19.11.2019**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**CRP. (MD) .No.1851 of 2012 (PD)**

**and**

**M.P. (MD) .No.2 of 2012**

**WEB COPY**

M.A.Shak Davuth

...Petitioner/Appellant/  
Petitioner/Plaintiff

**Vs.**

1.Nagoor Pitchai @ Paathamuthu

2.Sugila @ Beer Pathima

3.Abdul Wahab

...Respondents/Respondents/  
Respondents/Defendants

**PRAYER:** This Petition filed under Article 227 of the Constitution of India to set aside the order in I.A.No.323 of 2011 in O.S.No.968 of 2004, on the file of the IInd Additional District Munsif, Tirunelveli, dated 15.06.2011, confirmed in C.M.A.No.6A of 2011, dated 05.01.2012, on the file of the Principal Sub Judge, Tirunelveli.

For Petitioner : Mr.P.T.Ramesh Raja  
For Respondents : Mr.G.PrabhuRajadurai

**O R D E R**

This Civil Revision Petition has been filed against the fair and final order passed by the learned Principal Sub Judge, Tirunelveli in C.M.A.No.6A of 2011, confirming the order passed by the learned IInd Additional District Munsif, Tirunelveli, made in I.A.No.323 of 2011.

2. The petitioner is the plaintiff and he filed a suit against the respondents / defendants claiming for the relief of permanent injunction. The defendants also filed their written statement and the case was at the stage of trial. Due to the non appearance of the plaintiff, the suit was dismissed for default on 10.03.2011. An application came to be filed under Order 9 Rule 9 of the Code of Civil Procedure to restore the suit. This application came to be dismissed by the learned IInd Additional District Munsif, Tirunelveli, by an order dated 15.06.2011 and the same was also confirmed by the learned Principal Sub Judge, Tirunelveli in C.M.A.No.6A of 2011.

3. The learned counsel appearing for the petitioner submitted that the restoration petition has been filed without any delay and therefore, an opportunity must be given to the petitioner to pursue with the suit which can be decided on merits. The learned counsel further submitted that the petitioner was under the bonafide



impression that the trial Court did not proceed further with the suit in view of the pendency of C.R.P.(MD).1765 of 2010. Therefore, the learned counsel pleaded before this Court for giving an opportunity to the petitioner to decide the suit on merits.

4. Per contra, the learned counsel appearing on behalf of the respondents submitted that there is absolutely no bonafide on the part of the petitioner. The learned counsel further submitted that there was no stay granted, that was filed in C.R.P.(MD).No.1765 of 2010, against the order passed in an Interlocutory Application, dismissing the petition filed for amendment of plaint. Therefore, the petitioner cannot assume that the pendency of the Civil Revision Petition will be a ground for the Court below not to proceed further with the suit. The learned counsel further submitted that the suit was at the stage of trial in the year 2008 and there was absolutely no progress and in spite of several opportunities, the petitioner did not prosecute the suit for the period from 2008 to 2011 and the petitioner himself has accepted that the defendant is in possession of the suit schedule property. The learned counsel submitted that no useful purpose will be served in restoring the suit at this length of time, more particularly, when the order of the trial Court has been confirmed in the appeal.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. This Court is of the considered view that both the Courts have applied their mind and have given cogent reasons for rejecting the application filed by the petitioner for restoring the suit, which was dismissed for default. Right from the beginning, the petitioner has not been showing any interest in prosecuting the suit and the suit was filed in the year 2004 and it reached the stage of trial in the year 2008 and from thereon for nearly three years, the petitioner did not take any steps to prosecute further with the trial. No useful purpose will be served in directing the suit to be tried on merits at this length of time. This Court does not find any grounds to interfere with the orders passed by the Courts below.

7. In the result, the orders passed by the Courts below is hereby sustained and accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)



1.The IInd Additional District Munsif, Tirunelveli.

2.The Principal Sub Judge, Tirunelveli.

3.The Record Keeper, VR Section, (2 copies)  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to Mr.G. PRABHU RAJADURAI, Advocate ( SR-99638[F] dated  
20/11/2019 )

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VB(11.12.2019) 3P 6C