



WEB COPY

C.R.P(MD)No.607 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P(MD)No.607 of 2010

and

M.P(MD)No.1 of 2010

1.Srinivasan
2.Murugesan
3.R.Kumaresan

... Petitioners/Petitioners/
Defendants 2, 4 & 5

Vs.

1.Kamatchi
2.Dhanalakshmi
3.Palaniyandi

... Respondents/Respondents/
Plaintiff & Defendants 3 & 6

Prayer : Petition filed under Article 227 of the Constitution of India, against the order dated 25.11.2009 passed in I.A.No.351 of 2009 in O.S.No.455 of 2008 on the file of the Principal District Munsif Court, Karur.

For Petitioner : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

For Respondents : Mr.R.Vijayakumar for R.1

No appearance for R.3

R.2 - Dismissed
(vide order dated 19.12.2014)

* * * * *

ORDER

This Civil Revision Petition has been filed against the order dated 25.11.2009 passed in I.A.No.351 of 2009 in O.S.No.455 of 2008 on the file of the Principal District Munsif Court, Karur.

2. The first respondent is the plaintiff and the petitioners are the defendants 2, 4 and 5. The first respondent/plaintiff filed a suit in O.S.No.455 of 2008 on the file of the Principal District Munsif Court, Karur, seeking the following reliefs:

"(i) To declare the compromise decree in O.S.No.383 of 1978 passed on 30.08.1980 by the learned Subordinate Judge, Karur, as ab initio null and void, without jurisdiction, ultra vires of the powers of the Court;



(ii) To direct the defendants 1 to 5 to deliver possession of the Item No.2 of the suit properties to the plaintiff;

(iii) To direct the defendants 1 to 5 to pay past and future mesne profits to the plaintiff in respect of second item of the suit properties."

3. Pending suit, the petitioners herein/defendants 2, 4 and 5 filed I.A.No.351 of 2009 seeking to reject the plaint in O.S.No.455 of 2008. The trial Court, vide order dated 25.11.2009, dismissed the said application. Challenging the same, the present Civil Revision Petition has been filed.

4. It is contended by the learned Counsel for the petitioners that there is an inordinate delay in representing the matter before the trial Court and without issuing notice to the petitioners herein, who are the defendants 2, 4 and 5 in the suit, the order has been passed dismissing the application. He would submit that though there is no delay in filing the suit as the first respondent herein has filed the suit within three years from the date of attaining majority, there was a presentation of the suit in a wrong forum and thereafter, it was taken to Sub Court and in that process, apart from the delay of 20 years from the date of compromise decree in the year 1997, there is a delay of 17 years after the first respondent has attained majority and there was no proper Court fee paid, which was not properly appreciated by the trial Court.

5. It is further submitted by the learned Counsel for the petitioners that even though there is no necessity for filing any application for condoning the delay in representing and also for payment of deficit Court fee, when there is an enormous delay, the lower Court ought to have issued notice and decided the issue as has been laid down by this Court in **The Union of India, rep., by the Regional Director, (Food) Southern Region, Madras v. Messrs.Cavalier Shipping Co., and another** reported in **1989-2-L.W.-372**. The relevant portion of the said decision is extracted below:

"9. O.14, R.10(i) of the Original Side Rules prescribes that applications for admission and rejection of plaints and applications for excusing delay in re-presentation of pleadings beyond one month, shall be made to the Master. Impliedly the rule prescribes that the period for re-presentation of pleading is one month normally. If the period exceeds one month, then the delay should be got condoned by an application to the Master.

10. In view of the inordinate delay in this matter, the Master was not right in condoning the delay without ordering notice to the defendant.

11. The question of dismissing proceedings on the ground of inordinate delay or non-prosecution has



been considered by English Courts. In the Molloymawk 1974-I Lloyd's Law Reports 32, Justice Brandon held that in order to succeed in an application for striking out the proceedings on the ground of delay, the defendant should show (a) that there had been an inordinate delay by the plaintiffs in prosecuting the claim; (b) that such a delay was inexcusable; and (c) that the defendant would, or were likely to be seriously prejudicated by the delay. Though the learned Judge in that case found that the delay of over four years was inordinate, he held on the facts that it was not proved that the defendants were prejudiced by the delay so as to make a fair trial impossible. On that ground, he refused to strike off the proceedings."

6. Per contra, the learned Counsel for the first respondent/plaintiff would contend that she was a minor and that on attaining majority, the suit has been filed within three years and there was no delay in filing the suit, but there was a delay in representing the plaint as there were several returns made by the lower Court and that the matter was finally presented before the Sub Court, wherein there was a deficit Court fee, which was immediately paid. Insofar as the delay in re-presentation is concerned, it is left to the discretion of the Court either to order notice to the defendants or to condone the delay on verifying the genuineness of the reasons and documents presented thereto. In this case, the lower Court has taken note of the medical records and thereafter, condoned the delay. Secondly, there is no delay in payment of deficit Court fee and it has been paid immediately which has been discussed by the lower Court.

7. Heard both sides and perused the materials available on record.

8. It is not in dispute that the suit has been filed by the first respondent/plaintiff within three years as early as in the year 1990 and that the suit has been numbered only in 2008 after a period of 18 years, during which period, there was a presentation of the suit and returns and thereafter, it was presented before the Sub Court. Though there is no mandate to issue notice to the other side for condoning the delay in representing the suit, in the light of the decision referred to by the learned Counsel for the petitioners, which is extracted supra, since there is a delay of 18 years, it is mandatory that the lower Court ought to have issued notice to the petitioners herein as rights have been accrued to the petitioners which cannot be taken lightly and set at naught.

9. Even though there is no necessity to file an application, the genuineness of the medical certificate and other documents have



got to be gone into which can be objected to by the petitioners herein before the lower Court.

10. Keeping in mind the decision of this Court in ***The Union of India, rep., by the Regional Director, (Food) Southern Region, Madras v. Messrs.Cavalier Shipping Co., and another*** reported in ***1989-2-L.W.-372***, the order of the lower Court is interfered with and the matter is remitted to the learned Principal District Munsif, Karur, to decide as to whether the delay in re-presentation has got to be condoned or not and thereafter, proceed further with the matter including the application for rejection of plaint as it is a property right of the first respondent/plaintiff and so also that of the petitioners herein. As rights have been accrued due to passage of time, this Court expects the learned Principal District Munsif, Karur, to decide the matter as expeditiously as possible without adjourning the matter beyond seven working days and give a finality to the issue.

11. Before parting with this case, I am of the view that since the suit is of the year 1978 and more than four decades have been gone by, it is advisable for the parties to try to arrive at an amicable settlement through mediation to give a quietus to the matter as the litigation is endless, but there is an end for life of any person. There is a possibility of an appeal by the aggrieved person against the order that may be passed by the lower Court which may land up in the High Court and the Honourable Supreme Court after one or two decades and it will be too late to realise that the parties would have arrived at a compromise at the earliest point of time.

12. Accordingly, this Civil Revision Petition stands disposed of as above. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To
The Principal District Munsif,
Karur.

+1 CC to Mr.SARVABHAUMAN ASSOCIATES, Advocate (SR-88027[F] dated 20/09/2019)

+1 CC to Mr.R.VIJAYAKUMAR, Advocate (SR-88240[F] dated 20/09/2019)

C.R.P(MD)No.607 of 2010 and

M.P(MD)No.1 of 2010

19.09.2019

rsb

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