



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.11.2019
CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA
C.R.P. (MD) No.1241 of 2013

WEB COPY

Renganayaki

... Petitioner/Plaintiff

Vs.

1.Devaraj
2.Vijayaraghavan
3.Chithra

... Respondents/Defendants

PRAYER:- Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and decretal order passed in I.A.No.25 of 2012 in I.A.No.1522 of 2010 in O.S.No.440 of 2005 on the file of the Additional District Munsif, Srivilliputhur, dated 07.02.2013.

For Petitioner : Mr.M.Ashokkumar
For R1 : Mr.N.Dilipkumar

ORDER

The above civil revision petition is filed by the plaintiff to set aside the order in I.A.No.25 of 2012 in I.A.No.1522 of 2010 in O.S.No.440 of 2005 on the file of the Additional District Munsif, Srivilliputhur, dated 07.02.2013, which was filed to condone the delay of 274 days in filing an application for restoration in I.A.No.1522 of 2010 in O.S.No.440 of 2005.

2.The facts in brief, which are necessary to dispose of this civil revision petition are as follows:

2(i).The suit in O.S.No.440 of 2005 has been filed by the revision petitioner / plaintiff through her power agent before the learned Principal District Munsif Court, Srivilliputhur for partition with reference to six items of suit property in which she is claiming 3/6 share in the properties. The plaintiff entrusted the prosecution of the suit to her power agent on her behalf. Written statement has been filed by the defendants and thereafter, it appears that the suit was dismissed for default on 04.06.2009. An application for restoring has also been filed in I.A. No.1522 of 2010 by the power agent on behalf of the plaintiff. Once again, the said application has been dismissed on 09.12.2010 for non-prosecution. In the affidavit filed in support of the petition for condoning the delay of 274 days in filing restoration petition, it is stated that the power agent was acting against her interest without submitting accounts. Difference of opinion arose between the two of them and ultimately the plaintiff cancelled the power on 29.09.2011. Thereafter, the plaintiff had met her counsel in the



month of October 2011 wherein she came to know that the suit was dismissed for default on 04.06.2009 and application for restoration had also been dismissed for default on 09.12.2010. Therefore, the plaintiff has come forward with the said application to condone the delay in filing application to restore the petition in I.A.No.1522 of 2010, which was dismissed for default on 09.12.2010.

2(ii).The first respondent had filed a counter contending that the reasons stated are absolutely false, since after the dismissal of the suit for default, the petitioner has executed a settlement deed on 12.10.2010, in favour of her daughter, which is the subject matter in the suit in O.S. No.19 of 2011, which has been filed by the defendants to cancel the said settlement deed. In that proceedings, the revision petitioner had entered appearance and also filed counter. The suit in O.S.No.19 of 2011 is related to three items from out of the suit properties. The defendants further contended that the petitioner is very much aware of the dismissal of the suit in O.S.No.440 of 2005, since the same has been narrated in the plaint in O.S.No.19 of 2011.

2(iii).The learned Additional District Munsif, Srivilliputhur by an order dated 07.02.2013 dismissed the application relying upon the admissions of the petitioner that she was aware about the dismissal of the application in I.A.No.1522 of 2010 as well as the suit from the reading of the plaint in O.S.No.19 of 2011. The learned Judge further observed that the contention of the petitioner that she had came to know about the dismissal only on 03.10.2011 is totally incorrect and false. Therefore, the application was dismissed. Challenging the same, the revision petition is before this Court.

3.The learned counsel for the first respondent would contend that the plaintiff was very much aware about the proceedings when summons in O.S.No.19 of 2011 had reached her and thereafter, application has been moved only in the month of October 2011. Further, he contended that the suit in O.S.No.19 of 2011 has been decreed as early as on 14.08.2014.

4.Heard the learned counsel appearing on either side and perused the papers.

5.The suit in question is one for partition filed in the year 2005. Admittedly, the suit has been instituted on behalf of the plaintiff by her power agent. The matter had been contested till the year 2009 by the power agent. In the affidavit filed by the plaintiff, it is stated that the difference of opinion arose between her and the power agent in the matter of accounting and thereafter, she has cancelled the power on 29.09.2011 and has immediately moved an application for condoning the delay of 274 days in filing restoration petition.



6.It is seen from the records that the petitioner immediately moved to file a restore petition for restoring the suit by filing I.A.No.1522 of 2010. It is seen that the proceedings have been initiated only by the power agent on behalf of the petitioner till that stage. Thereafter, in view of the difference of opinion between the plaintiff and her power agent, the power agent let the application to be dismissed for default on 09.12.2010. The plaintiff has cancelled the power only on 29.09.2011, when she has found that the power agent was acting against her interest. Thereafter, the revision petitioner filed a petition to restore the application in I.A. No.1522 of 2010. However, in between delay occurred and therefore, she moved application for condoning the delay.

7.The learned counsel appearing for the first respondent had produced a copy of the written statement in the suit in O.S.No.19 of 2011 and it is seen that the petitioner has narrated all these factors and the written statement has been filed on 03.10.2011. This application has been moved thereafter.

8.The reasons given appear to be genuine and in these circumstances, this Court is inclined to set aside the order passed in I.A.No.25 of 2012 by the learned Additional District Munsif, Srivilliputhur. Considering the fact that the reasons that have been given for the delay and also for the restoring the petition in I.A.No.1522 of 2010, I am inclined to condone the delay and restore the application in I.A.No.1522 of 2010 back to file. The learned Additional District Munsif, Srivilliputhur, shall hear and pass orders in I.A.No.1522 of 2010, within a period of one month from the date of receipt of a copy of this order.

9.In the result, this civil revision petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Additional District Munsif, Srivilliputhur

+1 CC to Mr.N. DILIP KUMAR, Advocate (SR-100990[F] dated 25/11/2019)

+1 CC to Mr.M. ASHOK KUMAR, Advocate (SR-101246[F] dated 26/11/2019)

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