



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2019

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THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) (MD) No.2341 of 2013

and

M.P (MD) No.1 of 2013

Pounammal ... Petitioner/Petitioner/Appellant

-Vs-

1.Gurusamy

2.Amutha

... Respondents/Respondents/Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to call for the records relating to the impugned fair and decretal order dated 22.07.2013 made in I.A.No.526 of 2012 in A.S.No.62 of 1998, on the file of the Additional District and Sessions Judge, Theni at Periyakulam, set aside the same and allow this civil revision petition.

For Petitioner : Mr.K.Appadurai

For R1 : No appearance

O R D E R

The plaintiff in O.S.No.285 of 1997 has come up with this revision challenging the order made in I.A.No.526 of 2012 in A.S.No.62 of 1998 dismissing her application for scraping the memo filed by her counsel on 16.10.2004 withdrawing the appeal filed by her against the decree in O.S.No.285 of 1997.

2. The petitioner as a plaintiff filed the suit in O.S.No.285 of 1997 seeking permanent injunction restraining the defendant from interfering with the possession and enjoyment of the property. By judgment and decree dated 04.03.1997 the suit was dismissed.

3. Aggrieved, the plaintiff preferred an appeal in A.S.No.62 of 1998. On 16.09.2004 the counsel for the plaintiff/appellant filed a memo in A.S.No.62 of 1998 withdrawing the said appeal. It is stated that the memo was also signed by the petitioner herself. On the basis of the memo, the lower appellate court has dismissed the appeal as withdrawn. After about six years from the date of the order, dismissing the appeal as withdrawn, the plaintiff has come up with the present application seeking to scrap the said memo and restore the appeal for hearing. Since there was a delay in filing



the said application, an application under Section 5 of the Limitation Act was filed seeking to condone the delay of 2122 days in filing the petition to scrap the memo filed by the counsel for the appellant/petitioner.

4. In the affidavit filed in support of the said application, it is contended that the petitioner could not contact her advocate, since she had went out of her native place to work and earn a livelihood. She came to know about the appeal being dismissed as 'not pressed' recently and hence, there was a delay of 2122 days in filing the petition to scrap the memo and recalling order dated 16.10.2004 which should be condoned.

5. The lower appellate court upon hearing the arguments of the counsel on either side concluded that the petitioner/plaintiff cannot be allowed to seek to set aside the order, which was passed on consent nearly six years after the disposal of the appeal. The lower appellate Court also found that the reasons assigned in the affidavit filed in support of the application did not inspire the confidence of the Court. On the said findings, the application was dismissed. Aggrieved, the petitioner has come up with this revision.

6. I have heard Mr.K.Appadurai, learned counsel appearing for the petitioner.

7. A perusal of the orders passed by the lower appellate Court discloses that the petitioner herself has signed the memo. Her allegations in the affidavit filed in support of the application are very vague and uncertain. Though it is claimed that the appellant did not sign the memo dated 16.10.2004 no effort was made by her to prove that the signature contained in the memo is not hers. There should be some solemnity attached to Court proceedings. A party to the proceedings cannot be allowed to withdraw the suit or appeal, turn around after six years and file an application seeking set aside the decree. The lower Court has rightly held that the petitioner has not sufficiently explained the delay in filing the application to set aside the decree. The reasons assigned by the petitioner for the delay did not inspire the confidence of the Court. Hence, the Civil Revision Petition fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Additional District and Sessions Judge,
Theni at Periyakulam.

copy to

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

+1 CC to M/s.K.APPADURAI, Advocate (SR-103953[F] dated 09/12/2019)

C.R.P. (NPD) (MD) No.2341 of 2013
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srk(CO)

TR(20.12.2019) 3P 5C