



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

**CRP(MD)Nos.1675 and 1676 of 2019**  
**and CMP(MD)No.8656 of 2019**

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**CRP(MD) No.1675 of 2019**

1. Rajayyan  
2. Nesam @ Marianesam ... Petitioners/Petitioners/  
Appellants  
versus  
Maniyas ... Respondent/Respondent/Respondent

Revision Petition filed under Section 115 of C.P.C. against the order dated 23.02.2018 passed in I.A.No.77 of 2016 in A.S.SR.No.633 of 2016 on the file of the learned Sub Judge, Kuzhithurai.

**CRP(MD) No.1676 of 2019**

Rajayyan ... Petitioner/Petitioner/Appellant  
versus  
Maniyas ... Respondent/Respondent/Respondent

Revision Petition filed under Section 115 of C.P.C. against the order dated 13.12.2017 passed in I.A.No.81 of 2016 in A.S.SR.No.634 of 2016 on the file of the learned Sub Judge, Kuzhithurai.

For Petitioner(in both CRP) : Mr.P.Muthuvijay Pandian  
For Respondent(in both CRP) : Mr.C.Godwin

**COMMON ORDER**

The first revision petitioner filed a suit in O.S.No.556 of 2009 as against the respondent herein before the District Munsif Court, Kuzhithurai, seeking declaration of title and permanent injunction, while the respondent herein filed a suit in O.S.No.22 of 2010 as against the revision petitioners herein before the District Munsif Court, Kuzhithurai, seeking mandatory injunction.

2. The learned trial Judge tried both the suits together and on considering the oral and documentary evidence, by Common Judgment and Decree dated 21.09.2016, dismissed the suit in O.S.No.556 of 2009 filed by the first revision petitioner and ~~decided the suit in O.S.No.22 of 2010 filed by the respondent~~



herein. Aggrieved against the Judgment and Decree dated 21.09.2016 made in O.S.No.22 of 2010, the revision petitioners herein preferred an appeal in A.S.SR.No.633 of 2016 before the learned Sub Judge, Kuzhithurai, along with the application in I.A.No.77 of 2016 to condone the delay of 95 days in filing the appeal. They also filed another appeal in A.S.SR.No.634 of 2016 before the learned Sub Judge, Kuzhithurai, against the Judgment and Decree dated 21.09.2016 made in O.S.No.556 of 2009, along with the application in I.A.No.81 of 2016 to condone the delay of 95 days in filing the appeal. But, the learned Sub Judge, Kuzhithurai, by order dated 13.12.2017 and 23.02.2018, dismissed both the applications in I.A.No.81 of 2016 and I.A.No.77 of 2016 respectively. Challenging the orders dated 23.02.2018 and 13.12.2017 passed in I.A.No.77 of 2016 and I.A.No.81 of 2016 respectively, CRP(MD)Nos.1675 and 1676 of 2019 have been preferred.

3. The learned counsel appearing for the revision petitioners submitted that due to ill-health of first revision petitioner, namely, Rajayan, both the appeals were not filed in time. The learned counsel further submitted that the lawyer, who appeared before the Court below, also suffered from liver disease. Therefore, the delay had occurred in filing the appeal. But, the Court below, without considering the reasons stated by the revision petitioners, dismissed the delay applications. Therefore, the orders of the Court below require interference of this Court.

4. But, the learned counsel appearing for the respondent submitted that during the period, i.e. after the disposal of the suit and before the filing of the appeal, the revision petitioners were attending the Court of Judicial Magistrate No.I, Kuzhithurai, in connection with the case in STC No.1358 of 2011, therefore, the reason stated by the revision petitioners is not a *bona fide* one. In order to appreciate the same, the respondent also produced Ex.R1-Charge Sheet in STC No.1358 of 2011 and Ex.R2-Case diary extract. The Court below, on perusal of both documents, has also dismissed the applications, stating that both the documents clearly shows that during the period, i.e. after the disposal of suit and before filing of appeal, the first petitioner was attending the Criminal Court and therefore, the illness claimed by the petitioner is not *bona fide*. Hence, the orders of the Court below do not warrant any interference.

5. The learned counsel appearing for the revision petitioners further submitted that though the first revision petitioner was suffering from illness, he managed to attend the Criminal Court in STC No.1358 of 2011. Furthermore, the counsel, who appeared before the Court below for the revision petitioners, was also



suffering from liver disease, for which, a medical report has also been produced, due to which, he was not able to go to his lawyer's house in the evening time and to give instructions with regard to the filing of appeal. Therefore, the delay had occurred.

6. Heard the learned counsel appearing for the revision petitioners as well as the learned counsel appearing for the respondent.

7. It is the case of the revision petitioners that the first revision petitioner was suffering from medical ailments, due to which, he was not able to meet his counsel, who was also suffering from liver disease, therefore, the delay had occurred. But, it is the case of the respondent that the first revision petitioner was able to attend the Criminal Court, therefore, the reasons stated by the first revision petitioner is not a bona fide one. The contention of the learned counsel for the respondent is a correct one. May be, the case being criminal in nature, the first revision petitioner would have been forced to attend the Criminal Court. Therefore, the said act of the first revision petitioner should not be put against him to deny him the right of appeal. At the same time, the fault of the first revision petitioner in not filing the appeal within the statutory period would also be detriment of the respondent and therefore, the petitioner should be put on terms.

8. Accordingly, both the Civil Revision Petitions are allowed, subject to payment of cost of Rs.5,000/- each in both the applications, payable by the revision petitioners to the respondent, within a period of two weeks from the date of receipt of copy of this order. On filing necessary memo along with proof for payment of cost in both the applications, the Court below is directed to number both the appeals and after numbering the appeal, dispose of both the appeals, on merits and in accordance with law, within a period of six months thereafter.

9. With the above directions, both the Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)



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To  
The Sub Judge,  
Kuzhithurai.

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