



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P. (NPD) (MD) No.1056 of 2014
and
M.P (MD) No.1 of 2014

Gopalakrishnan ... Petitioner/Plaintiff

vs.

- 1.V. Kokila,
- 2.V.Saravanan,
- 3.V. Nanthakumar,
- 4.V. Punitha,
- 5.V.Sevanthiyammal @ Vanitha,
- 6.Minor.Hemamalini,
Rep. by her Mother &
Natural Guardian
V.Sevanthiyammal @ Vanitha,
- 7.State Bank of India,
Rep. by its Branch Manager,
Rock Fort Branch, Trichy-2.
- 8.Indian Bank,
Rep.By its Branch Manager,
Rock Fort Branch, Trichy.
- 9.Indian Bank,
Rep.By its Branch Manager,
Gandhi Market Branch, Trichy.
- 10.Indian Bank,
Rep.By its Kulithalai Branch,
Karur District.
11. Indian Overseas Bank,
Rep. by its Branch Manager,
Kulithalai Branch,
Karur District.



12. Karur Vysya Bank,
Rep. By its Branch Manager,
Kulithalai Branch, Karur District.

13. Indian Overseas Bank,
Rep. by its Branch Manager,
Nachanallur Branch,
Karur District.

14. Indian Overseas Bank,
Rep. by its Branch Manager,
Thogamalai Branch,
Karur District.

... Respondents

PRAYER: Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 20.01.2014 passed in I.A.No.231 of 2012 in I.A.No.634 of 2011 in O.S.No.96 of 2010 on the file of III Additional District Judge, Tiruchirappalli.

For Petitioner : Mr.M.Saravanan

For Respondents : No appearance

ORDER

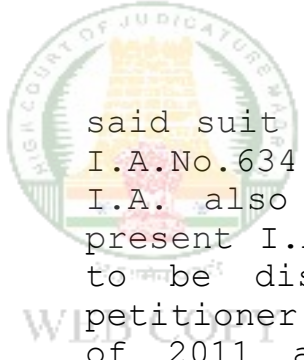
This Civil Revision Petition is filed challenging the order dated 20.01.2014 in I.A.No.231 of 2012 in I.A.No.634 of 2011 in O.S.No.96 of 2010.

2.The impugned order was passed in a petition to condone the delay of 32 days in filing the application to restore I.A.No.634 of 2011. The said I.A.No.634 of 2011 was filed to restore the suit by setting aside the order of dismissal, dated 22.07.2011.

3.I heard the learned counsel for the revision petitioner.

4.Inspite of service of notice, there is no appearance for respondents 1 to 4 and 7 to 14. Respondents 5 and 6 were given up by the revision petitioner.

5.On perusal of the plaint, it is seen that the revision petitioner/plaintiff has filed the suit for partition and for a consequential permanent injunction restraining the respondents/defendants 1 to 4 therein from alienating or leasing out or making further encumbrances on the suit properties. The



said suit was dismissed for default by order dated 22.07.2011 and I.A.No.634 of 2011 was filed on 28.07.2011. However, the said I.A. also came to be dismissed for default and therefore, the present I.A. namely I.A.No.231 of 2012 was filed. This I.A. came to be dismissed by the trial Court on the basis that the petitioner is not clear about the date of dismissal of I.A.No.634 of 2011 and has wrongly mentioned the date of dismissal as 22.07.2011, whereas the said I.A. was dismissed for default on 31.01.2012. In addition, the trial Court stated that the petitioner has not substantiated the reasons for delay. The trial Court has further stated that the petitioner filed a petition under Section 5 of the Limitation Act, without an application specifically to restore I.A.No.634 of 2011 on file.

6.As stated above, the suit is filed for partition and for consequential permanent injunction. The extent of delay in filing I.A.No.231 of 2012 is only 32 days. On examining the affidavit filed in support of I.A.No.231 of 2012, I find that the revision petitioner has stated that he was also prosecuting a transfer petition at the same time and that he was unwell. In view of the settled legal position that a liberal construction of "sufficient cause" should be adopted in such a matter so as to render substantial justice, I am of the view that the petitioner has made out sufficient cause to condone the delay of 32 days, subject to payment of costs. Accordingly, the impugned order is set aside on condition that the revision petitioner shall pay a sum of Rs.2,000/- to the credit of the Honourable Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai, within a period of six weeks from the date of receipt of a copy of this order. Subject to the fulfilment of the above condition, the order of the trial Court is set aside. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

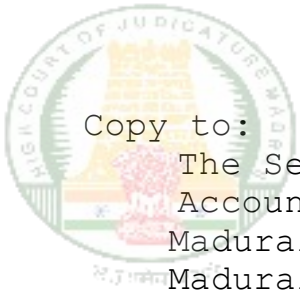
To

1.The III Additional District Judge,
Tiruchirappalli.

2. The Section Officer,

<https://hcservices.ecourts.gov.in/civilservices/>

Madurai Bench of Madras High Court,
Madurai. (2 copies)



Copy to:
The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

WEB COPY

+1cc to Mr.N.C.Ashok Kumar, Advocate in SR.No.77794

Order made in

C.R.P. (PD) (MD) No.1056 of 2014

and

M.P (MD) No.1 of 2014

25.07.2019

AE/ (03.09.2019) 4P 6C