



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2019

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (NPD) (MD)No.521 of 2013

and

M.P.(MD)No.1 of 2013

Gunasekaran : Petitioner/Petitioner/Appellant

.. Vs ..

1.Muthuppandu Rayar
2.Pichaimani Kandiyar
3.Pandiammal
4.Senthil

: Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the fair and decretal order dated 21.09.2012 passed in I.A.No.3 of 2012 in unnumbered A.S. of 2012 on the file of the Subordinate Judge, Periyakulam.

For Petitioner : Mr.M.Saravanan

For respondents : Mr.A.R.Kannan
for Mr.C.Rajesh

ORDER

This Civil Revision Petition has been preferred against the order passed in I.A.No.3 of 2012 in unnumbered A.S. 2012 on the file of the Sub Court, Periyakulam.

2.The revision petitioner, as plaintiff, filed a suit in O.S.No.68 of 2008 on the file of the District Munsif Court, Periyakulam, for permanent injunction restraining the respondents in the Civil Revision Petition from interfering with his peaceful possession and enjoyment of the properties. The suit properties consists of two items, namely, 'A' schedule and 'B' schedule. 'A' schedule consists of 1 acres and 8 cents in Survey No.724 and 'B' schedule consist of 2 acres 62 cents in Survey No.725/2. The plaintiff/revision petitioner has admitted that the suit properties, both 'A' and 'B' schedule, are Government poramboke lands and that he is in possession and enjoyment of the properties for more than 50 years by cultivating the lands. It is also stated in the plaint that the father of the revision petitioner was originally in possession and thereafter, the revision petitioner is in possession. Though it is admitted by the plaintiff that the defendants in the suit have their lands on the western side of the suit property, the definite case of the plaintiff is that the defendants have no manner of right over any portion of the suit properties and that they are in the plaintiff's absolute possession. The suit was partly decreed. In



the suit, there is no dispute with regard to 'A' schedule and the defendants have filed a written statement admitting the fact that the plaintiff is in possession of the suit 'A' schedule. With regard to 'B' schedule, out of an extent of 2 acres 62 cents comprised in Survey No.725/2, the defendants stated that they are in possession of 52 cents and that their possession for a long time is known from the records. Since there was no lis with regard to the suit 'A' schedule, the suit was decreed in respect of 'A' schedule and dismissed in respect of 'B' schedule. Aggrieved by same, the plaintiff has preferred an appeal with the delay of 496 days in filing the appeal. The revision petitioner filed I.A.No.3 of 2012 to condone the delay of 496 days in filing the appeal. This petition was dismissed by holding that no reason had been stated by the plaintiff to condone the delay. The plaintiff has come to this Court with the above Civil Revision Petition by challenging the order passed by the learned Sub Judge, Periyakulam, in I.A.No.3 of 2012.

3.The learned Counsel appearing for the revision petitioner submitted that the *bona fides* of the revision petitioner cannot be doubted and that the reasons for the delay ought to have been accepted by the lower Court. It is also submitted by the learned Counsel for the petitioner that the Court should always show leniency and give opportunity in cases of this nature by condoning the delay. The learned Counsel for the petitioner further stated that each day's delay need not be explained and that the petitioner had shown sufficient cause for not filing the appeal within the stipulated time.

4.The learned Counsel for the respondents contested the Civil Revision Petition and vehemently argued that the revision petitioner has not given any reason in the affidavit filed in support of the petition to condone the delay. He also pointed out that the suit has been decreed partly and dismissed with regard to the portion of the property in which the respondent is in possession for a long time. It is not in dispute that the suit property is a Government poramboke land and the person in possession is having limited right to be in possession till he is evicted by due process of law. It is in these circumstances, the learned Counsel appearing for the respondents would further contend that the findings of the trial Court in dismissing the suit should also be taken into account. Finally, the learned Counsel appearing for the respondents submitted that serious prejudice would be caused to the respondents in case this petition is allowed after this length of time.

5.This Court considered the rival submissions anxiously.

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6.Substantial facts are not in dispute in this case. Though the delay is 496 days, the petitioner has stated some reasons to



condone the delay. Since the revision petitioners contend that the delay was on account of getting opinion for filing an appeal, it is contended by the learned Counsel appearing for the respondents that the reason cannot be accepted. Normally, in similar circumstances, the Court will not entertain the petition if it is shown that the purpose of filing an appeal is only to gain time or with ulterior motive without merit. In the present case, this Court is unable to find any *mala fides* behind the litigation.

7. The trial Court dismissed the petition only on the ground that serious prejudice is likely to be caused to the respondents to enjoy the property. It is to be seen that the revision petitioner is the plaintiff and this Court is unable to find any justification for the observation made by the lower Court. Though the lower Court has given some reasons which are relevant this Court is of the view that an opportunity should be given to the revision petitioner to put forth his case on merits in the appeal that is pending before the lower Court. The reasons stated by the revision petitioner to condone the delay cannot be rejected merely because the reasons are not probable. The revision petitioner being the plaintiff in the suit can be shown some indulgence by this Court. Hence, this Civil Revision Petition is allowed. The order of lower Court in I.A.No.3 of 2012 in unnumbered first appeal is set aside. I.A.No.3 of 2012 stands allowed on terms. Having regard to the fact that the delay is inordinate and the respondents are likely to suffer some inconvenience and prejudice, the revision petitioner is directed to pay a sum of Rs.5,000/- (Rupees five thousand only) to the respondents directly within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To
The Subordinate Judge,
Periyakulam.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-49609[F] dated 26/02/2019)

SRM

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