

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMP.No.5233 of 2018 and Rev.A.SR.No.17555 of 2018
in CRP.No.3450 of 2016

R.Prakash ...Petitioner/Review Petitioner

Vs.

G.SelvarajRespondent

Prayer:- CMP.No.5233 of 2018 is filed to condone the delay of 88 days in filing the review Petition against the order dated 30.10.2017 passed in CRP.No.3450 of 2016. Rev.A.SR.No.17555 of 2018 is filed to review the order dated 30.10.2017 made in CRP.No.3450 of 2016 by this Court which was filed to set aside the fair and decretal order dated 03/06/2016 passed in IA No.2264 of 2015 in O.S.No.840 of 2013 on the file of the I Additional District Munsif, Coimbatore.

For Petitioner : Mr.T.Murugamanikam,
SC for Mr.A.Swaminathan

For Respondent : Mr.R.Kannan

COMMON ORDER

- 1.This CMP.No.5233 of 2018 is filed by the Respondent in CRP.No.3450 of 2016 to condone the delay of 88 days in filing the above Review Petition in Rev.A.SR.No.17555 of 2018 in CRP.No.3450 of 2016. Rev.A.SR.No.17555 of 2018 is filed to review the order dated 30.10.2017 made in CRP.No.3450 of 2016 by this Court.
- 2.This court heard the learned counsel on either side and also perused the materials placed on record.

- 3.The Petitioner herein had filed the suit in OS.No.840 of 2013 for permanent injunction and for mandatory injunction against the Respondent/ Defendant and in the said suit, the Respondent had filed a written statement on 22.07.2013, stating that the Defendant is in possession of the property in TS.No.136/2 and the survey number mentioned in the schedule of suit property is entirely different and that the Advocate Commissioner had also submitted a report, stating that the property in dispute is situated in TS.No.136/2 and the trial has commenced in the said suit and thereafter, an application in IA.No.2264 of 2015 to amend the survey number in the schedule of suit property was filed and the said application was allowed by order dated, 03.06.2016, challenging which, the Respondent herein had filed CRP.No.3450 of 2016, which was allowed by order dated 30.10.2017, setting aside the order dated 03.06.2016. As against the said order dated, 30.10.2017, the above review petition has been filed along with the above petition to condone the delay.
- 4.The review application has been filed before this Court on 27.02.2018 and subsequently, the both the parties had agitated the matter before the Trial Court and the suit was dismissed by judgement and decree dated 28.03.2018, as against which, the Petitioner/ review Applicant has preferred AS.No.85 of 2018 before the Sub Court, Coimbatore and the present review application has been filed along with the above said application to condone the delay.
- 5.During the course of the arguments, the learned senior counsel for the Petitioner/ review petitioner has submitted that pursuant to the order dated 30.10.2017 made in CRP.No.3450 of 2016, the Petitioner/ review Petitioner has agitated the matter before the Trial Court and the same was dismissed and as against the same, now, an Appeal Suit is pending before the lower appellate court and at this stage, the present Review Application is listed before this Court and the learned senior counsel for the Petitioner has sought for liberty to seek appropriate relief before the concerned Court as observed in the Civil Revision Petition.
- 6.On the other hand, the learned counsel for the Respondent has submitted that even though the Respondent has objection to condone the delay in filing the review petition, if the Petitioner is advised, he can file a fresh suit in respect of the disputed survey number within a time to be fixed by this Court.

7. On considering the facts of the case and the submissions of the learned counsel on either side, CMP.No.5233 of 2018 is dismissed and consequently, Rev.A.SR.No.17555 of 2018 is also dismissed, however the Petitioner/ revision petitioner is granted liberty to work out his remedy by filing a fresh suit in respect of the disputed survey number within a period of eight weeks from the date of receipt of a copy of this order, as observed in the order, dated 30.10.2017 passed in the Civil Revision petition.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Ist Additional District Munsif Court,
Coimbatore.

+1cc to M/s.A.Swaminathan, Advocate Sr.1901

+1cc to M/s.R.Kannan, Advocate Sr.2359

CMP.No.5233 of 2018
in Rev.A.SR.No.17555 of 2018
in CRP.No.3450 of 2016

vsn II[co]
srg 13/03/2020

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