

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 12.02.2020

Order pronounced on : 28.02.2020

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. NPD 2097 of 2015
and
M.P. 1 of 2015

R.Manguthai ... Petitioner

Versus

1. D.Ganesan
2. G.Sakunthala (died)
3. G.Mathaiyan
4. R.Natarajan
5. N.Parasakthi
6. Kolandapaiyan @ Subramani
7. K.Appuroopam ... Respondents

PRAYER : Civil Revision Petition is filed under Sec.115 of Civil Procedure Code, praying to set aside the fair and decreetal order dated 16.04.2015 passed in I.A. 118 of 2014 in O.S. 158 of 2008, on the file of District Munsif Court, Mettur.

For Petitioner : Mr.P.Mani

For Respondents : Ms.Zeenath Begum for R1,
R3 to R7

ORDER

This Civil Revision Petition has been filed against the order condoning the delay of 401 days in filing the petition to set aside the exparte decree.

2. The petitioner is a plaintiff in O.S. 158 of 2008. The suit has been filed for permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit property. The above suit has been filed on the ground that, the petitioner/plaintiff purchased an extent of 75 cents in Survey No.78/1 from one Molakutti Boyan and Sennammal. Along with that, the plaintiff has also purchased an extent of 25 cents of sivajima lands on the east of the above said 75 cents of land on the very same day, which is a suit schedule property. According to the plaintiff, the patta was also granted in her favour, and she has also made improvements in the property. Even before the purchase of lands, the plaintiff's vendors enjoyed the suit property, thereafter, they are in possession and enjoyment of the property as on today, and also paid B memo

charges. Now, the defendants are trying to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property. Hence, she has filed a suit.

3. The defendants filed their written statement stating that, they are in possession and enjoyment of natham land purchased by them, and constructed a house therein. A patta was also granted in their favour. Adjacent to patta land, the suit schedule property is situated, only the defendants alone are in possession and enjoyment of the suit property, the plaintiff has never been in possession of suit schedule property. Thereafter, the respondents were set exparte, and an exparte decree was passed against them on 21.06.2012. To set aside the exparte decree, the respondents have filed an application under Order 9 Rule 13 of C.P.C. along with a petition to condone the delay of 401 days in filing the above application. The above application has been allowed by the court below on payment of cost of Rs.1000/-. Now, challenging the same, the present Civil Revision Petition has been filed.

4. Mr. P.Mani, learned counsel appearing for petitioner would submit that, there is a long delay of 401 days in filing the petition, and the delay was not properly explained by the respondents/defendants. Even though several reasons stated by the respondents, it is not sufficient for condoning the delay. According to learned counsel, the exparte decree has been passed on 21.06.2012. It is stated that, since 2nd defendant wife was admitted in the hospital in the month of April 2012, they were not able to meet their counsel. That apart, it is also stated that, while the 2nd defendant wife was admitted in the hospital, the petitioner/plaintiff, said to have met them, and assured them that, she would not prosecute the suit further. Believing her words, the respondents have not taken any steps to contest the suit. However, in the cross-examination, the respondents have admitted that, the plaintiff did not meet them in the hospital, and talk to them as stated above. Hence, the respondents have come out with a false affidavit, on that ground also, the application filed by the respondents is liable to be set aside. But, without considering the same, the court below has allowed the application. In support of his contentions, the learned counsel

has relied upon two judgments in the case of ***Union Bank of India, Oppanakara Street, Coimbatore Vs. K.R.Jewellers and others***, reported in ***2008 (5) CTC 651***, and in the case of ***Pundlik Jalam Patil (D) by LRs. Vs. Exe. Eng. Jalgaon Medum Project and another***, reported in ***2008 (5) CTC 663***.

5. Per contra, Ms. Zeenath Begum, learned counsel appearing for respondents would submit that, the suit has been filed for permanent injunction, wherein the petitioner is not in possession of the suit schedule property, it is only, the respondents/defendants, were in possession and enjoyment of the property. They have also filed a written statement, and contested the suit. After commencement of trial, the 2nd defendant was admitted in the hospital, hence, they could not appear before the court. To substantiate the same, the 3rd defendant was examined as P.W.1, and marked several documents. Considering the above circumstances, the Trial Court has rightly allowed the application, and there is no reason to interfere with the order passed by the court below.

6. I have considered rival submissions made by learned counsel appearing for petitioner as well learned counsel appearing for respondents and perused the records carefully.

7. This Civil Revision Petition has been filed against the order condoning the delay of 401 days in filing the application to set aside exparte decree passed against them. The reasons stated for the delay is that, 1st defendant was looking after the suit on behalf of other defendants, and his wife, 2nd defendant was sick, she was admitted in the hospital. Hence, he could not appear before the court below during trial. That apart, their counsel also did not inform about the passing of exparte decree. They came to know about the same only after receipt of notice issued by petitioner/plaintiff's counsel on 12.08.2013, and immediately, they have filed the above application on 26.08.2013. To substantiate their contentions, the 3rd defendant has examined himself as P.W.1, and marked as many as 7 documents including medical certificate issued by the hospital, and also the patta issued in favour of respondents by the revenue authorities. The respondents have also cross-examined the

petitioner. On the part of the petitioner, she has marked 23 documents including the complaint given by the petitioner, legal notice issued by the petitioner, and the acknowledgment card. The Trial Court has considered all the materials, and came to a conclusion that, the reasons stated by the respondents for the delay is bonafide, and allowed the application on payment of cost.

8. It is settled law, the length of delay is not an issue, but the acceptability of explanation for the delay is the only criteria. If the explanation offered by the petitioner is bonafide, and the petitioner is not indulging in dilatory tactics, the delay is not deliberate, and the cause shown by the petitioner for the delay is sufficient and bonafide, the Court can exercise its discretion and condone the delay. The proof of sufficient cause is a condition precedent for exercising discretionary jurisdiction under Sec.5 of Limitation Act. In the instant case, from the perusal of materials, there is a dispute over the possession of the property between plaintiff and defendants, both of them stated that they are in possession of the property. In support of the same, both of them filed documentary evidence. In the above circumstances, there is

no necessity for the respondents to deliberately let the suit decreed exparte. He has also filed written statement, and contested the suit. Further, one of the defendants has also given evidence, and narrated the circumstances for the delay in filing the petition, and also produced documentary evidence to support his contentions. In the above circumstances, this Court finds no reason to doubt the bonafide of the petitioner. The Trial Court also, after considering the entire materials, has rightly exercised its discretion and condone the delay on payment of cost.

9. It is contended by the learned counsel appearing for petitioner that, the respondents did not come to the court with clean hands, and filed a false affidavit. Hence, the discretion could not be exercised. The evidence of the respondents cannot read in isolation, the entire materials available on record clearly establish that, the cause shown for the delay does not lacks bonafide, and submissions of learned counsel appearing for petitioner cannot be countenanced. So far as the judgment relied upon by the petitioner is concerned, the Hon'ble Supreme Court of India has held that, a person come to the court with a false stand to get rid of the bar of limitation should not be

encouraged, but that judgment is not applicable to the present case.

10. Considering the facts and circumstances, I am of the considered view that, there is no illegality or irregularity in the order passed by the court below, and I find no merit in this Civil Revision Petition. Accordingly, this Civil Revision Petition stands dismissed.

11. However, considering the fact that, the suit is pending from the year 2008, the Trial Court is directed to proceed with the trial and dispose the same within a period of six months from the date of receipt of the copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

28.02.2020

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

District Munsif Court,
Mettur.

V.BHARATHIDASAN,J.

rpp



Pre-delivery order in
C.R.P. NPD 2097 of 2015
and
M.P. 1 of 2015

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