

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD)..No.2192 of 2015

1.Selvaraj
S/o.Seerangaboyan

2.Raju
S/o.Ramaboyan

3.Ramasamy
S/o.Sanjeevi

4.Raju
S/o.Sanjeevi

... Petitioners

Vs.

1.Ramasamy Kounder
S/o.Pallakku Perumal Kounder

2.Kali Kounder
S/o.Karuppa Kounder

3.Muthusamy
S/o.Palanisamy

4.Palanivelu
S/o.Karuppakounder

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C, against the order and decretal order dated 16.12.2014 made in I.A.No.131 of 2013 in Un No.A.S. Of 2013 on the file of the Subordinate Judge, Namakkal.

For Petitioners : Mr.T.Dhanyakumar

For Respondents : Mr.P.Valliyappan

ORDER

This Civil Revision Petition has been filed by the petitioners/appellants against the order passed by the Sub Judge, Namakkal in I.A.No.131 of 2013 in Unnumbered A.S. Of 2013 dated 16.12.2014.

2. The petitioners herein have filed a suit in O.S.No.341 of 2007 on the file of the District Munsif, Namakkal for the relief of permanent injunction restraining the defendants from interfering in conducting the festivals by following the Agama Rules. They have filed the said suit representing Boyar community people of Vasanthapuram Village.

3. The learned District Munsif has dismissed the said suit by the judgment and decree dated 19.11.2012. Feeling aggrieved, the plaintiffs have filed an appeal with I.A.No.131 of 2013 under Order 41 Rule 3 (A)

of CPC to condone the delay of 329 days in filing the appeal before the Sub Judge, Namakkal. The learned Sub Judge by the order dated 16.12.2014 has dismissed the said petition. Feeling aggrieved, the petitioners/appellants have filed the present Civil Revision Petition.

4. Heard Mr.T.Dhanya Kumar, the learned counsel for the petitioners and and Mr.P.Valliappan, the learned counsel for the respondents.

5. The learned counsel for the petitioners has submitted that the learned Sub Judge is erred in not going into the merits of the appeal while deciding the petition to condone the delay in filing appeal. He further submitted that the learned Sub Judge has held that the learned District Munsif has dismissed the suit on the ground that the suit is barred by the principles of *res-judicata*. He further submitted that the learned Sub Judge should not have gone into the merits of the appeal. He further submitted that the petitioners after getting copy of the judgment and decree passed in O.S.No.341 of 2007, they filed contempt petition based on the decree passed in the

previous suit i.e., O.S.No.291 of 1989, but, subsequently their counsel advised to them to file appeal against the dismissal of their second suit in O.S.No.341 of 2007 and hence there was a delay of 329 days in filing the appeal, but the learned Sub Judge without considering the said explanation, has erroneously dismissed the petitioners' petition. Therefore, he prayed to allow the Civil Revision Petition and set aside the order passed by the learned Sub Judge and allow the I.A.No.131 of 2013 and give an opportunity to the petitioners to take a chance in the appeal.

6. Per contra, the learned counsel for the respondents would submit that the petitioners have not given any explanation at all for condoning the huge delay of nearly one year. He further submitted that after the dismissal of the suit in O.S.No.341 of 2007, the petitioners have accepted the said verdict and filed the contempt petition based on the decree passed in the previous suit and after nearly one year, they have suddenly filed an appeal against the dismissal of the suit in O.S.No.341 of 2007 with a petition to condone the delay of 329 of days. He further submitted that the petitioners have not stated any valid reason to condone

the delay of 329 days and taking into consideration of the aforesaid facts, the learned Sub-Judge has rightly dismissed the said petition and with the said order, this Court need not interfere and therefore he prayed to dismiss the Civil Revision Petition.

7. This Court has carefully considered the rival submissions and also perused the materials filed along with the Civil Revision Petition.

8. Admittedly, the petitioners herein had already filed a suit in O.S.No.291 of 1989 representing the Boyar Community People of Vasanthapuram Village for the relief of declaration and for permanent injunction restraining the defendants therein and their community people from interfering with the plaintiffs community people from performing the poojas by following the Agama Rules. The said suit was decreed declaring the plaintiffs' right and also granting decree for permanent injunction. In the appeal the lower Court's decree with regard to the aforesaid reliefs confirmed. Thereafter, the plaintiffs have filed another suit in O.S.No.341 of 2007 representing the Boyar community people of Vasanthapuram Village for the relief of permanent injunction restraining the defendants from interfering with their right to conduct the festivals

in Mariamman Temple situated at Thandagoundanoor, Namakkal District by following Agama Rules.

9. The learned District Munsif has dismissed the said suit by observing that since the plaintiffs have already got a decree in their favour in O.S.No.291 of 1989, the second suit is barred by the principle of *res judicata* and accordingly dismissed the said suit on 19.11.2012. Thereafter, it appears that the petitioners herein had filed a contempt petition against the respondents based on the decree which was obtained by them in the previous suit i.e., in O.S.No.291 of 1989. Thereafter, suddenly they have filed an appeal before the learned Sub-Judge, Namakkal against the dismissal of their second suit i.e., in O.S.No.341 of 2007 with a petition to condone the delay of 329 days (I.A.No.131 of 2013).

10. In the affidavit filed in support of the aforesaid I.A.No.131 of 2013, the petitioners have not stated any explanation for condoning the huge delay of 329 days in filing the appeal. They have simply stated that after getting a copy of the judgment in O.S.No.341 of 2007, they have filed a contempt petition based on the decree granted in the previous suit

i.e., in O.S.No.291 of 1989 and subsequently, their counsel advised to file an appeal against the dismissal of their second suit in O.S.No.341 of 2007 and that was the reason for the delay of 329 days in filing the appeal.

11. The conduct of the petitioners would show that they have initially accepted the judgment and decree passed in O.S.No.341 of 2007 and filed a contempt petition based on the decree which was granted in the previous suit in O.S.No.291 of 1989 and thereafter, they wanted to get relief in the second suit also. It only shows that they have not acted bonafidely. The learned Sub-Judge taking into consideration the aforesaid facts has rightly dismissed the petition. This Court does not find any infirmity in the said order.

12. In the result, this Civil Revision Petition is dismissed. No Costs.

Vv/dna
Index :Yes/No
Internet : Yes/No

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CRP (NPD).No.2192 of 2015

P.RAJAMANICKAM.J.,

Vv/dna

Copy To

The Subordinate Judge,
Namakkal.



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