

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.4046 of 2015

Rathinam ... Petitioner

Vs.

1.Pappayammal
2.Palanisamy
3.Rathinam

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the order and decreetal order passed by the Additional District Court, Namakkal in I.A.No.57 of 2015 in O.S.No.180 of 2012 dated 10.06.2015 and prays that the same may kindly be set aside.

For Petitioner

: Mr.R.Varun Karthick
for Mr.C.Jagadish

For Respondents

: Mr.Mukunth for
M/s.Sarvabhuman Associates

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the dismissal of his application in I.A.No.57 of 2015 in O.S.No.190 of 2012 on the file of the Additional District Judge, Namakkal dated 10.06.2015.

2.The petitioner herein had filed an application in I.A.No.57 of 2015 in O.S.No.190 of 2012 on the file of the Additional District Judge, Namakkal under Section 5 of the Limitation Act, to condone the delay of 13 days in filing a petition to restore the suit which was dismissed for default on 12.01.2015. The learned Additional District Judge, Namakkal by the order dated 10.06.2015 had dismissed the said application. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petition.

3.Heard Mr.R.Varun Karthick for Mr.C.Jagadish the learned counsel for the petitioner and Mr.Mukunth for M/s.Sarvabhuman Associates the learned counsel for the respondents.

4.The learned counsel for the petitioner has submitted that the petitioner is the daughter of the first respondent and sister of the second respondent and that, the third respondent is the wife of the second respondent. He further submitted that the petitioner had filed a suit in O.S.No.190 of 2012 on the file of the Additional District Judge, Namakkal for the relief of partition of the suit property. He further submitted that, when the said suit was posted for trial in the list on 12.01.2015, the petitioner did not appear before the Trial Court, and hence the Trial Court had dismissed the said suit and subsequently, the petitioner had filed an application in I.A.No.57 of 2015 to condone the delay of 13 days in filing the petition to restore the suit. He further submitted that since the petitioner was not doing well, she did not appear before the Trial Court and consequently the suit was dismissed for default and after recovering from her illness, she filed petition to restore the suit along with a petition to condone the delay of 13 days, but without considering the said fact, the Trial Court had erroneously dismissed the said petition. He further submitted that since the above suit is for the relief of partition, one more chance may be given to the petitioner to conduct the case and therefore, he prayed to allow this Civil

Revision Petition and set aside the order passed by the learned Additional District Judge, Namakkal in I.A.No.57 of 2015 and allow the said I.A.

5.Per contra, the learned counsel for the Respondents has submitted that the order passed by the Trial Court would clearly show that the suit was posted in the list on 01.12.2014 and subsequently, it was adjourned to 10.12.2014, 16.12.2014, 23.12.2014, 07.01.2015 and 12.01.2015 and on all those days, the petitioner did not appear. Taking into consideration the fact, that the petitioner did not appear continuously, the Trial Court had dismissed the said suit. He further submitted that, in the affidavit filed in support of the petition, the petitioner had simply stated that, she was not doing well, she has not stated what is her ailment. In any event, she evaded from appearing before the Trial Court and also not filed the petition within the limitation. He further submitted that taking into consideration the aforesaid facts, the Trial Court had rightly dismissed the said petition and in the said order this Court need not interfere and therefore he prayed for dismissal of this Civil Revision Petition.

6. This Court has carefully considered the rival submissions and materials filed along with this petition.

7. Admittedly, the petitioner is the daughter of the first respondent and sister of the second respondent. She filed the suit in O.S.No.190 of 2012 on the file of the Additional District Judge, Namakkal for the relief of partition for the 1/6th share in the suit property. A perusal of the order passed by the Trial Court, shows that the said suit was posted in the list on 01.12.2014 and subsequently it was adjourned to 10.12.2014, 16.12.2014, 23.12.2014, 07.01.2015 and 12.01.2015 and in all those days not only the petitioner, but the respondent also did not appear.

8. In the affidavit filed in support of the petition, the petitioner has stated that, she was not doing well and hence she could not appear before the Trial Court on 12.01.2015 and hence, she could not file restoration petition within the limitation. Since the parties are relatives and the suit itself is for the relief of partition, the Trial Court should have approached the said petition with liberal construction. But, it had dismissed the said

petition on the ground that the petitioner had not disclosed the nature of illness and also not explained the delay of 13 days in filing the petition to restore the suit.

9.In G.Ramegowda, Major, Etc., Vs. Special Land Acquisition Officer, Bangalore, AIR 1988 SC 897 the Hon'ble Supreme Court held that the "Sufficient Cause" in Section 5 of the limitation Act must receive a liberal construction so as to advance substantial justice. This Court is of the view that, the approach of the Trial Court is very hypertechnical, and therefore the order passed by the Trial Court is liable to be set aside. However, the petitioner shall compensate the respondents for the inconvenience caused to them.

10.In the result, this Civil Revision Petition will be allowed on payment of costs of Rs.3,000/- (Rupees Three Thousand only) to the respondents either directly or through their advocate who appeared before the Trial Court within three weeks from the date of receipt of a copy of this order, failing which, the Civil Revision Petition shall stand dismissed without further reference to this Court. If the petitioner complied the aforesaid condition within the stipulated period, the Trial

Court has to number the Petition filed under Order 9 Rule 9 of CPC and dispose of the same in accordance with law.

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Index :Yes/No
Internet : Yes/No
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To

The III Additional City Civil Court,
Chennai.



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