

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP. (NPD) .No.1169 of 2014
and
MP.No.1 of 2014

1.Syed Mohammed

2.Abbas

... Petitioners

Versus

1.Suguna

2.Sumathi

3.Muthulakshmi

4.Minor. Rajasekaran

Rep.by Guardian Mother Muthulakshmi

Dhanalakshmi (died)

5.Rani

6.Sellamuthu

7.Mani

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Order dated 18.11.2013 made in I.A.No.673 of 2012 in O.S.No.490 of 2004 on the file of the Principal District Munsif, Vridhachalam, Cuddalore District.

For petitioners
For Respondents

: Mr.S.Senthilnathan
: No Appearance - R1 to R5
: Died - R6
: Not ready in notice - R7

ORDER

The 5th and 6th defendants in the suit O.S.No.490 of 2004 are the revision petitioners herein. They have filed the present Revision against the order dated 18.11.2013 allowing the application filed by the plaintiffs in I.A.No.673 of 2012 in O.S.No.490 of 2004 by condoning the delay of 2597 days in filing an application to restore the suit, which was dismissed for default on 30.06.2005.

2.The respondents 1 and 2 herein/plaintiffs have filed the suit in O.S. No. 490 of 2004 to declare that the compromise entered into between the parties in the earlier suit in O.S.No.145 of 1998 is null and void and for consequential relief of injunction against the defendants 4 to 8 from disturbing the joint possession of the plaintiffs or in the alternative, sought relief of partition or separate possession in 11/20th share in the suit properties. In the said suit, written statement was filed and the matter was posted for appearance of the plaintiffs and the parties, on 24.06.2005. As there was no representation for the parties, the suit was dismissed for default. Thereafter, the plaintiffs/respondents herein filed an application in I.A.No. 673 of 2012 under Section 5 of the Limitation Act, 1963 for restoration of the suit and counter filed. After enquiry the application was allowed on payment of costs of Rs.1000/- to the respondents. Assailing the same, the present Civil revision preferred by the defendants 5 and 6.

3.Heard both sides and perused the materials available on records.

4.The suit filed by the respondents 1 and 2 herein in O.S.No.490 of 2004 was dismissed for default, hence an application in I.A.No.673 of 2012 under Order IX and Rule 9 of CPC., was filed along with the petition to condone the delay of 2597 days in restoring the suit to file.

5.Admittedly, the suit is filed to declare the compromise decree passed in O.S.No.145 of 1998 dated 12.01.1999 as null and void with alternative relief for partition. Thus, the suit was filed in the year 2004 itself. Nearly after five years, issues were framed and the parties were ordered to be present on 24.06.2005 and on that day the plaintiffs were absent, hence, the suit was dismissed for default. Therefore, the petition for restoration of the suit was filed along with the condone delay of 2597 days and the same was allowed by the Court below with payment of costs.

6.After perusing the averments made in the affidavit, in the absence of any positive averments, the delay was not proved with any documents to substantiate that the alleged medical health grounds. This Court is of the view that the Trial Court has committed error in allowing the application without any sufficient cause to condone the delay of 2597 days, which is inordinate.

7.Hence, the Civil Revision Petition is allowed and the order dated 18.11.2013 made in I.A.No.673 of 2012 in O.S.No.490 of 2004 is set aside. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

klt

To

The Principal District Munsif, Vridhachalam, Cuddalore District.

Copy To

The Section Officer, V.R.Section, High Court, Madras.

+1 cc to Mr.S.Senthilnathan ,Advocate Sr.No. to 8501

CRP. (NPD).No.1169 of 2014

SSV(CO)

KKV/22/05/2020

सत्यमेव जयते

WEB COPY