

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.1447 of 2014
and
M.P.No.1 of 2014

Sampangirama Reddy

... Petitioner

Vs.

1.Eerappa
2.Pappamma
3.Venkatesh
4.Ellappa

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of CPC, to set aside the orders of the learned Subordinate Judge of Hosur, dated 27.11.2013 in I.A.No.23 of 2013 in Un-Numbered Appeal Suit No.NIL of 2013 and allow the above C.R.P.

For Petitioner

: Mr.Karthikeyan for
M/s.V.Nicholas

For Respondents

: M/s.K.Karthika for R1

No Appearance for R2 to R4

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the dismissal of his Application in I.A.No.23 of 2013 in Unnumbered Appeal Suit No.NIL of 2013 on the file of the Subordinate Judge, Hosur dated 27.11.2013.

2.The petitioner herein had filed an Appeal against the judgment and decree passed by the District Munsif, Denkanikottai in O.S.No.166 of 2008 along with an Application under Order 41 Rule 3-A and Section 151 of CPC to condone the delay of 381 days in filing the said Appeal. The learned Subordinate Judge, Hosur, had dismissed the said Application by the order dated 27.11.2013. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petition.

3.Heard Mr.Karthikeyan for Mr.V.Nicholas, learned counsel for the petitioner and Ms.K.Karthika, the learned counsel for the 1st respondent.

4.The learned counsel for the petitioner/plaintiff has submitted that the petitioner herein had filed a suit in O.S.No.166 of 2008 on the file of the District Munsif, Denkanikottai, to declare his title over the suit property and for permanent injunction to restrain the defendant, therein from interfering with his peaceful possession and enjoyment of the suit property. He further submitted that the extent of the suit property is at 0.53.5 Hectares situated in Survey No.506/2 of Chilipilimangalam Village, but the learned District Munsif, Denkanikottai, by a judgment dated 26.09.2011 had partly decreed the said suit and granted decree in respect of the extent of 1.07 acres only. He further submitted that, feeling aggrieved with regard to the dismissal of the suit in respect of the remaining extent of the suit property, the petitioner had filed an Appeal with a petition to condone the delay of 381 days, but the Appellate Court had dismissed the said Application. He further submitted that after getting certified copies of the judgment and decree from the Trial Court, the said copies were mingled with other case records in the Advocate Office, and hence the petitioner could not file an Appeal in time and without considering the said fact, the Appellate Court had erroneously dismissed the said Application. He further submitted that the petitioner is having a chance of success in the Appeal and hence, he requests to

grant an opportunity to the petitioner to put forth his case before the Appellate Court and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the Appellate Court in I.A.No.23 of 2013 and allow the said Application.

5.Per contra, the learned counsel for the 1st respondent has submitted that, in the affidavit filed in support of the Application in I.A.No.23 of 2013, the petitioner has admitted that the Trial Court had pronounced judgment on 26.09.2011 and copy Application was filed on 09.12.2011 and copies were made ready on 29.02.2012. After receipt of the said copies, the petitioner's counsel has misplaced the said copies in his Office. But, he has not given any explanation for not filing copy Application immediately after pronouncement of the judgment by the Trial Court. He further submitted that the actual delay in filing the Appeal is 468 days, but, the petitioner has wrongly calculated the delay as only 381 days and taking into consideration the aforesaid facts, the Appellate Court had rightly dismissed the said Application and therefore, he prayed to dismiss this Civil Revision Petition.

6.A perusal of the typed set of papers filed by the petitioner shows that he filed a suit in O.S.No.166 of 2008 on the file of the District Munsif, Denkanikottai for the relief of declaration of his title over the suit property to the extent of 0.53.5 Hec, in Survey No.506/2 of Chilipilimangalam Village and also he prayed to grant permanent injunction to restrain the defendants and their men from interfering with his peaceful possession and enjoyment of the suit property.

7.The Trial Court, after considering the materials placed before it, by the judgment dated 26.09.2011, had partly decreed the said suit and granted decree only in respect of 1.07 acres in Survey No.506/2 of Chilipilimangalam Village. In the affidavit filed by the petitioner in I.A.No.23 of 2013, the petitioner has stated that, he filed a Copy Application only on 09.12.2011. No reason was assigned for not filing any copy Application immediately after pronouncement of the judgment. The copy Application itself has been filed with the delay of 74 days, and for the said delay, the petitioner has not stated any reason. He also stated that the copies were made ready on 29.02.2012 and they were received by his counsel and were mis-placed in his Counsel's Office and hence, the Appeal could not be filed in time. To substantiate the said fact,

the petitioner has not obtained any affidavit from his counsel and filed before the Court. Taking into consideration, the aforesaid facts, the Appellate Court had rightly dismissed the said Application, as the petitioner has not properly explained the inordinate delay in filing the Appeal. This Court does not find any irregularity or illegality in the said order. Hence, this Civil Revision Petition is liable to be dismissed.

8.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.12.2020

Index :Yes/No
Internet : Yes/No
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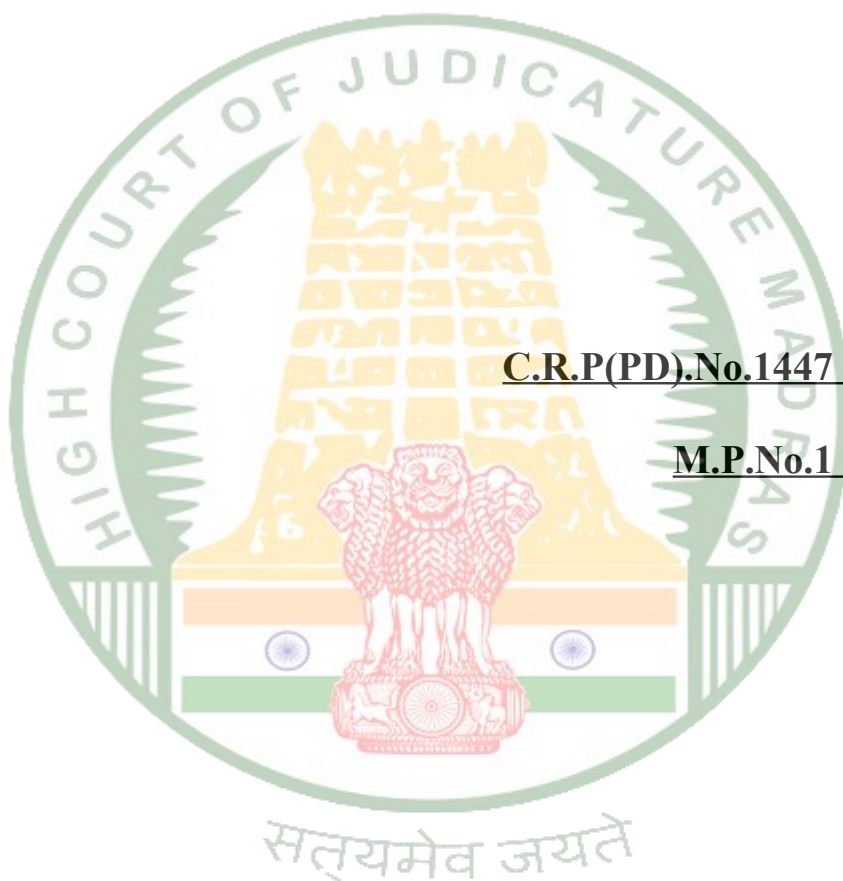
The Subordinate Judge,
Hosur.



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