

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.174 of 2014

and

M.P.No.1 of 2014

Thangavel Padayachi(Died)
Vasantha

... Petitioner

Vs.

1.Arulmurugan
2.Sivakumar (Minor)
3.Santhiya (Minor)
(Minors are rep by Mother
Palaniyammal)

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair and Final order dated 04.09.2013 made in I.A.No.907 of 2008 in O.S.No.115 of 2001, on the file of the District Munsif Court, Attur.

For Petitioner

: M/s.R.Venkatraman for
M/s.K.S.Karthik Raja

For Respondents

: M/s.V.Lakshminarayanan
for R1

ORDER

This Civil Revision Petition has been filed by the 2nd defendant against the order passed by the District Munsif, Attur in I.A.No.907 of 2008 in O.S.No.115 of 2001 dated 04.09.2013.

2.The respondents herein had filed an Application in I.A.No.907 of 2008 in O.S.No.115 of 2001 on the file of the District Munsif, Attur under Order IX Rule 9 of CPC to restore the suit which was dismissed for default on 17.06.2008. The learned District Munsif, by the order dated 04.09.2013 allowed the said application. Feeling aggrieved, the 2nd defendant has filed the present Civil Revision Petition.

3.Heard Mr.R.Venkatraman for Mr.K.S.Karthik Raja, learned counsel for the petitioner and Mr.V.Lakshminarayanan, learned counsel for the 1st respondent.

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4.The learned counsel for the petitioner has submitted that the suit was dismissed for default on 17.06.2008. The limitation for filing petition to restore the suit was expired on 16.07.2008. But the respondents herein had filed an Application in I.A.No.907 of 2008 under

order IX Rule 9 of CPC to restore the suit on 17.07.2008, i.e., beyond 30 days and hence the petitioner herein had filed a memo before the Trial Court pointing out the fact, that the said petition has not been filed in time and hence the respondents herein have to file an application to condone the delay and after considering the said memo, the learned District Munsif, Attur, by the order dated 12.07.2012 had directed the respondents herein to file a petition under Section 5 of the limitation Act to condone the delay of one day in filing petition under Order IX Rule 9 of CPC. But, subsequently the learned District Munsif had *suo moto* re-opened the matter and disposed of the Application in I.A.No.907 of 2008 holding that the said petition has been filed within limitation and there is no necessity to file delay excuse petition. He further submitted that the order passed by the District Munsif, dated 04.09.2013 is contrary to the earlier order dated 12.03.2012. He further submitted that since the suit was dismissed for default on 17.06.2008, the limitation for filing petition to restore the suit expired on 16.07.2008 itself. But without considering the said fact, the learned District Munsif had allowed the application in I.A.No.907 of 2008 which was filed on 17.07.2008. Therefore he prayed to allow the Civil Revision Petition and set aside the order passed by the learned District Munsif, Attur in I.A.No.907 of 2008 in O.S.No.115 of

2001 and dismiss the said application.

5.Per contra, the learned counsel for the 1st respondent has submitted that the suit was dismissed for default on 17.06.2008 and the limitation for filing petition to restore the suit, starts only from the next day i.e from 18.06.2008 and if the same is calculated from 18.06.2008, the 30th day will fall only on 17.07.2008. He further submitted that the respondents had filed an application in I.A.No.907 of 2008 on 17.07.2008 and the same is not denied. Taking into consideration, the said fact the learned District Munsif, Attur by the order dated 04.09.2013 had allowed the application and there is no irregularity or illegality in the said order and therefore he payed to dismiss this Civil Revision Petition.

6.A perusal of the typed set of papers filed by the petitioner shows that the respondent herein had filed a suit in O.S.No.115 of 2001 on the file of the District Munsif, Attur to declare the preliminary decree dated 14.08.1997 passed in O.S.No.178 of 1997 on the file of the said Court as fraudulent, collusive, null and void and will not bind on them and other reliefs.

7.It appears that during pendency of the said suit, the 1st defendant died and the suit was posted for taking steps to implead the legal heirs of the 1st defendant. But the plaintiffs did not take steps to implead the legal heirs of the 1st defendant and hence the suit was dismissed for default on 17.06.2008. Thereafter, the respondents/plaintiffs had filed an Application in I.A.No.107 of 2008 under order IX Rule 9 of CPC on 17.07.2008, to restore the suit. According to the petitioner herein, since the suit was dismissed for default on 17.06.2008 and the limitation for filing petition to restore the suit expired on 16.07.2008, but the petition to restore the suit was filed only on 17.07.2008 and hence the said petition is barred by limitation.

8.In this context, it would be relevant to extract section 12(1) of Limitation Act which reads as under:-

"12.Exclusion of time in legal proceedings:-

(1)In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded."

9.A bare reading of the aforesaid provisions of law shows that for computing the period of limitation for filing any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. In this case, the suit was dismissed for default on 17.06.2008. So, the limitation for filing petition to restore the suit will start from the next day i.e., on 18.06.2008. As such the 30th day will fall on 17.07.2008 and hence the said petition is in time. Taking into consideration the aforesaid fact the learned District Munsif, Attur by the order dated 04.09.2013 had rejected the contentions of the petitioner herein that the said petition is barred by limitation and allowed the said petition. This Court does not find any irregularity or infirmity in the said order. Hence, this Civil Revision Petition is liable to be dismissed.

10.In the result, this Civil Revision Petition is dismissed. No costs.

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Index :Yes/No
Internet : Yes/No
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To

The District Munsif Court, Attur.

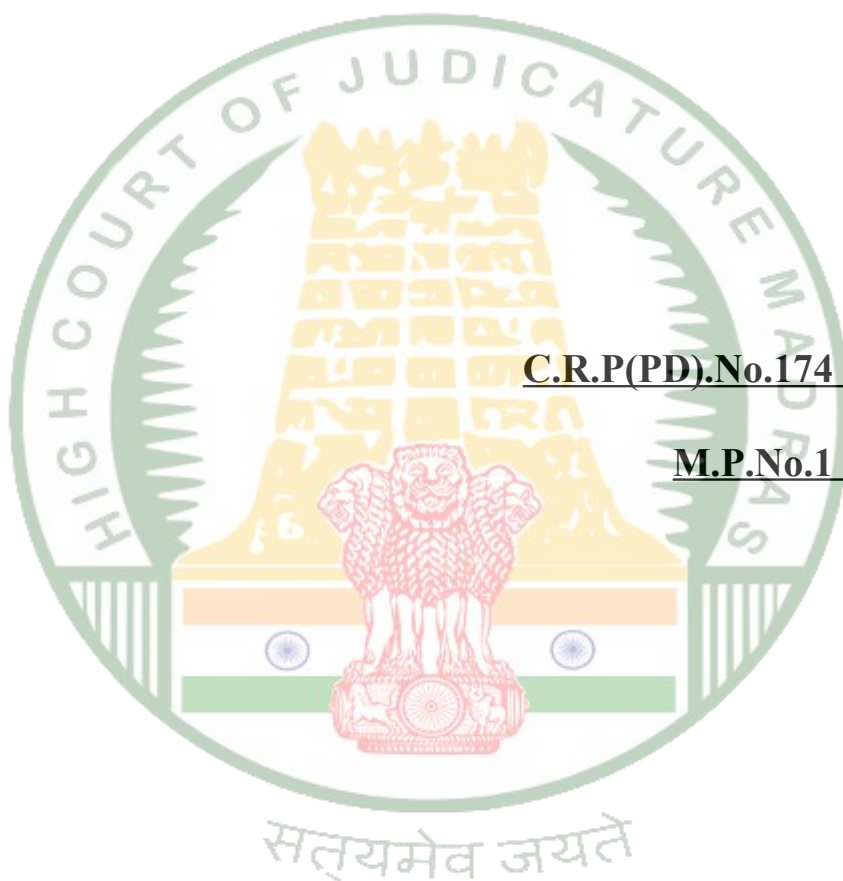


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