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CRP (MD) No.372 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP (MD) No.372 of 2020

and

CMP (MD) No.2220 of 2020

1.Sivanammal
2.Valarmathi
3.Chandira
4.Deivam
5.Velmurugan
6.Balamurugan
7.Sivasakthi

.. Petitioners/Petitioners/Appellants

Vs.

Kalimuthu

... Respondent/Respondent/Respondent

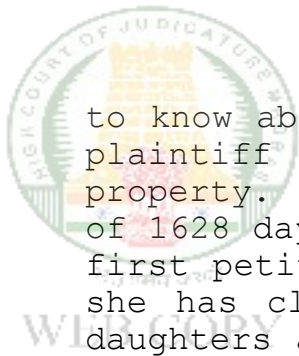
Civil Revision Petition filed under Section 115 CPC to call for the records relating to the fair and decreetal order dated 20.11.2019 passed in I.A.No.2/2019 in unnumbered AS.No. -- of 2019 by the Subordinate Judge, Theni and set aside the same.

For Petitioners : Mr.D.Malaichamy
For Respondent : Mr.R.Subramanian

ORDER

The respondent/plaintiff has filed a suit in O.S.No.59 of 2005 on the file of the District Munsif Court, Andipatti against one Packiam. During pendency of the suit, the said Packiam passed away. Therefore, his legal heirs have been impleaded as defendants 2 to 8 in the suit. The trial Court has decreed the suit and directed the defendants to vacate and hand over possession of the suit property. Challenging the judgment and decree, the petitioners/defendants have filed an appeal before the Sub Court, Theni and in filing the said appeal, there is a delay of 1628 days. That application was dismissed by the appellate Court. Challenging the said order passed by the appellate Court, the appellants/defendants 2 to 8 are before this Court by way of filing this Civil Revision Petition.

2.The learned counsel for the petitioners would submit that the first petitioner is the wife of the original defendant Packiam, the petitioners 2 to 4 are their daughters and the petitioners 5 to 7 are their sons and some of them are living away from the first petitioner in other State and due to her old age, she could not meet her counsel and give instructions in time to file the appeal and only after receiving summons in the execution proceedings, she came



to know about the decree passed against the defendants and now the plaintiff is taking steps to evict the defendants from the suit property. Challenging the same, she filed an appeal with the delay of 1628 days. The learned counsel would further submit that even the first petitioner was examined as PW1 in the said application, where she has clearly stated that she is living alone and her sons and daughters are living away from the suit property. Further the suit was filed for mandatory injunction and even the plaintiff himself has admitted that the defendants are in possession of the suit property for more than a statutory period. The appellate Court failed to consider the said facts. Further because of the delay in filing the appeal, the appellate Court should not take a hyper-technical view and substantial justice should be given to the petitioners. Therefore, the delay has to be condoned. In support of his contentions, the learned counsel for the petitioners relied upon the following decisions:

- (i) (1998) 7 Supreme Court Cases 123 [N. Balakrishnan V. M. Krishnamurthy]
- (ii) (2002) 3 Supreme Court Cases 195 [Ram Nath Sao alias Ramnath Sahu and others V. Gobardhan Sao and others]
- (iii) (2001) 6 Supreme Court Cases 176 [M. K. Prasad V. P. Arumugam]

3. The learned counsel for the respondent would submit that the sixth petitioner has been shown as 7th defendant in the suit and on behalf of the petitioners/defendants, he was examined as DW1 and he only filed the written statement and followed all the proceedings. After the judgment and decree passed by the trial Court, the petitioners/defendants have not challenged the same and only after the respondent/plaintiff filed the execution petition and after delivery was ordered, in order to get the delivery proceedings delayed, they have set up the first petitioner and filed the petition stating that all the petitioners are away from the suit property and due to old age, the first petitioner could not meet her counsel and give instructions. Further, during the course of cross examination, she herself admitted that till 2017, two of her sons were residing with her and they had two tractors and were doing agricultural work. She further admitted that even her sons were left, her grand children and daughters-in-law are residing with her. Therefore, all the petitioners are very well known about the decree passed by the trial Court and they have also frequently visited the first petitioner herein. Therefore, only to create sympathy of this Court, they filed affidavit through the old age first petitioner. Therefore, the petitioners have not approached the Court with clean hands. The appellate Court has rightly dismissed the petition filed to condone the delay, which does not warrant any interference of this Court.

4. Heard the learned counsel on either side and perused the <https://www.courts.madras.gov.in/cases/> available on record.



5. Admittedly, the respondent filed the suit against one Packiam. During pendency of the suit, the original defendant passed away and these petitioners were impleaded as defendants. The 6th petitioner herein/7th defendant in the suit has filed the written statement and he was only examined as DW1 and now he has not filed any affidavit in the petition filed to condone the delay in filing the appeal. Having followed all the proceedings in the suit, he has not filed the appeal in time. Though the first petitioner is the mother of the other petitioners, she has stated that she could not meet the counsel due to illness and old age. Further, she has not stated in the affidavit as to why the 7th defendant has not filed the petition and why she has filed the affidavit on behalf of the other petitioners also. It is not as if the other persons left her and there is no talking terms and they deserted her and therefore she wanted to establish her interest and they have not added them as respondents or rival claimants.

6. Coming to the decisions relied on by the learned counsel for the petitioner, they are not applicable to the facts of the present case on hand. In two of the decisions cited supra, the sole respondent has filed the applications stating the reasons for not filing of the applications in time. The Hon'ble Supreme Court has allowed those applications on the ground that the Court cannot adopt hyper technical view and parties have to be given opportunity. Whereas, in the case on hand, the petitioners/appellants have not filed the appeal in time and one of the petitioners/defendants alone has filed the petition to condone the delay and she has not stated any reason except that the other petitioners left her and they are living outside the suit property and that may not be the proper reason to allow the application.

7. In another decision reported in (2002) 3 Supreme Court Cases 195 (cited supra), the Hon'ble Supreme Court allowed the application on the ground that for bringing the legal heirs, the Court has to give an opportunity and then they have to participate in the proceedings. Whereas, in this case, the petitioners have already participated in the trial and decree was passed against them and they have not at all challenged the judgment and decree in time and there is a delay of 1628 days in filing the appeal. Further, the person who filed the written statement and who has given evidence as DW1 and participated in the trial, has not come to the Court. The first petitioner also has not clearly stated as to why the 6th respondent/7th defendant has not filed any application. Further only after receiving the execution petition and to get the delivery proceedings delayed, the petitioners have now filed the petition to condone the delay in filing the appeal suit. Therefore, under these circumstances, this Court is of the view that the petitioners have not come before this Court with clean hands and this Court does not find any perversity in the order passed by the trial Court and this



is dismissed. No costs. Consequently, CMP (MD) No.2220 of 2020 is closed.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar (CS)

mj

To

1. The Sub Judge, Theni
2. The District Munsif, Andipatti, Theni District.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-12712[F] dated 20/03/2020)

+1 CC to M/s.D.MALAICHAMY, Advocate (SR-12739[F] dated 20/03/2020)

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KK(10.06.2020) 4P 5C