



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No. 1625 of 2015 (NPD)

1. Ayyavu Thevar

2. Seeni Thevar

... Petitioners/Respondents/

Respondents

[A-2 is brought on record as LR of deceased sole appellant vide Court Order, dated 10.09.2020]

vs.

Sahadevan (Died)

2. Muthuvelammal

3. Palanivel

4. Muruges

5. Viswanathan

6. Lagonathan

... Respondents/Petitioners

/Defendants

[Respondent Nos.2 to 6 brought as LR of deceased 1st respondent vide Court Order, dated 02.12.2015].

PRAYER : Petition filed under Article 227 of Constitution of India, to call for the records and set aside the Fair and Decreetal Order, dated 13.03.2015 in I.A. No. 80 of 2011 in A.S. No.622 of 2004 on the file of the Additional Sub Court, Dindigul and consequently allow this Civil Revision Petition with cost.

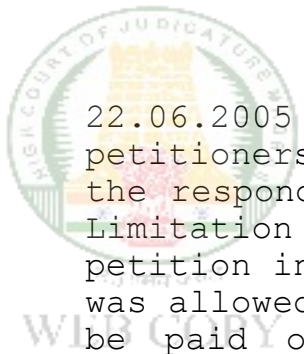
For Petitioner : M/s.H. Lakshmi Shankar

For R-2 to R-6 : No appearance

ORDER

This petition has been filed to set aside the Fair and Decreetal Order, dated 13.03.2015 in I.A. No. 80 of 2011 in A.S. No.622 of 2004 on the file of the Additional Sub Court, Dindigul and consequently allow this Civil Revision Petition with cost.

2. The learned counsel appearing for the revision petitioners would submit that the appeal suit in A.S. No.622 of 2004 has been filed by the respondents herein against the dismissal order, dated 22.06.2005 passed by the learned Additional Subordinate Judge, Dindigul. Since the respondents herein have failed to appear on



22.06.2005 an exparte order was passed in favour of the revision petitioners herein. He would further submit that, after 2276 days, the respondents herein have filed a petition under Section 5 of the Limitation Act, to condone the delay of 2276 days in filing a petition in I.A. No. 80 of 2011 in A.S. No. 622 of 2004 and the same was allowed on 13.03.2015 with costs of Rs.2,500/-and the same shall be paid on or before 23.03.2015 and the same was posted for compliance on 24.03.2015. The respondents have failed to pay the costs and the order, dated 13.03.2015 stands cancelled automatically. Hence, the Civil Revision Petitions have been filed to set aside the order, dated 13.03.2015 passed in I.A. No.80 of 2011 in A.S. No.622 of 2004 on the file of the Additional Subordinate Court, Dindigul.

3. Heard the learned counsel appearing for the revision petitioners and perused the material documents available on record.

4. On perusal of records, the original suit in O.S. No.654 of 1996 was filed in the year 1996 and Judgment was rendered as early on 26.11.1997 and against the decree and Judgment the respondents herein have filed A.S. No.622 of 2004 and the same was posted for argument and on that the respondents herein failed to appear and hence, the appeal suit was dismissed as default on 22.06.2005. The restoration petition was filed under Section 5 of Limitation Act in I.A. No.80 of 2011 in A.S. No.622 of 2004 for the delay of 2276 days in filing and the reason for the delay of 2276 days in filing the petition is that the respondent herein has taken treatment in Madurai for his illness and hence, he could not meet his counsel. He would further submit that, in the meantime an exparte order, dated 12.12.2003 was passed in favour of the revision petitioner herein.

5. Considering the submissions made by the learned counsel appearing for the revision petitioners and on perusal of record, the respondents have not produced any medical records to prove his illness. After lapse of six of years, the respondents have filed a petition under Section 5 of the Limitation Act, to condone the delay of 2276 days in filing a petition in I.A. No.80 of 2011 in A.S. No.622 of 2004. They have not stated any proper reasons for delay in filing a petition in I.A. No.80 of 2011. Each and every day delay should be explained by the parties before the trial Court below, but, the respondents have failed to prove their case through oral and documentary evidence. The suit is of the year 1996 and the reason for inordinate delay of 2276 days is not genuine and the suit was filed only for permanent injunction. After 24 years, from the date of filing of the suit cannot be restored for permanent injunction.



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C.R.P.(MD) No. 1625 of 2015 (NPD)

6. In the result, the Civil Revision Petition stands dismissed.
No Costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Additional Sub Court, Dindigul.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies).

+1 CC to M/s.H.LAKSHMI SANKAR, Advocate (SR-25366[F] dated
14/12/2020)

Order made in
C.R.P. (MD) No. 1625 of 2015

14.12.2020

SJ (CO)

NR (22/12/2020) 3P : 5C