



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P (MD)No.568 of 2015 (NPD)

K.C.Kaliyaperumal

.. Petitioner/Petitioner/Plaintiff

Vs.

1.Vancheeswara Iyer

2.Karunanithi

3.The Tahsildar,

Thiruvidaimarudur Taluk Office,

Thiruvidaimarudur & Taluk,

Thanjavur District.

4.The District Collector of Thanjavur,

Collectorate Buildings,

Thanjavur Town.

.. Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition filed, under Section 115 of the Civil Procedure Code, to set aside the fair order and decretal order in I.A.No.53 of 2013 in O.S.No.332 of 2009 dated 28.11.2013 on the file of the II Additional District Munsif-cum-Judicial Magistrate, Kumbakonam and allow this Civil Revision Petition.

For Petitioner: Mr.A.Rahul

For R1 & R2 : Mr.M.R.S.Prabhu

For R3 & R4 : Mr.J.Gunaseelanmuthiah

Additional Government Pleader

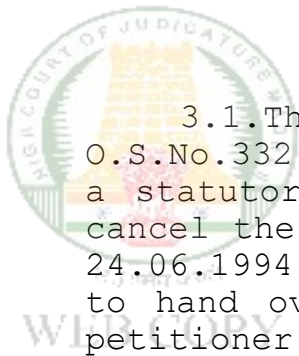
ORDER

This Civil Revision Petition is directed against the order passed by the learned II Additional District Munsif-cum-Judicial Magistrate, Kumbakonam in I.A.No.53 of 2013 in O.S.No.332 of 2009.

2.Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents and perused the materials available on record.

3.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



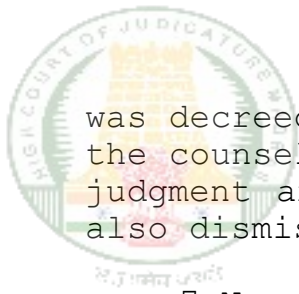
3.1.The revision petitioner is the plaintiff in the suit in O.S.No.332 of 2009. The said suit was for a declaration that he is a statutory tenant over the suit property under the owner and to cancel the decree in O.S.No.410 of 1989 passed by the same Court on 24.06.1994. The suit is also for a direction to both the defendants to hand over the possession of the suit property to the revision petitioner. It is admitted that the first defendant in the suit, earlier filed a suit in O.S.No.410 of 1989 and obtained a decree for injunction restraining the present plaintiff and his men from interfering with his peaceful possession and enjoyment of the suit property. The said suit was decreed by judgment and decree dated 24.06.1994. It is to be seen that the suit in O.S.No.410 of 1989 was contested on merits and after considering the evidence, the trial Court granted a decree for injunction in favour of the first respondent. It was thereafter, the plaintiff/revision petitioner filed the present suit with an object to nullify the judgment and decree in the earlier suit, which was decided on merits. There is no allegation of fraud or any other ground to sustain the plea of revision petitioner challenging the earlier judgment of the Civil Court.

3.2.The suit filed by the revision petitioner was posted for hearing on 02.07.2012 and the Court was constrained to dismiss the suit for default by judgment and decree dated 02.07.2012. Nearly, after a year, the revision petitioner filed a petition for restoration of the suit, which was dismissed for default on 02.07.2012 along with petition to condone the delay of 358 days in filing the petition to restore the suit. The petition filed under Section 5 of Limitation Act to condone the delay of 358 days was dismissed after holding that the long delay of 358 days has not been properly explained to the satisfaction of the Court. Since the petition was found to be lacking *bona fides*, the lower Court dismissed the petition filed by the revision petitioner in I.A.No.53 of 2013.

4.The learned counsel appearing for the revision petitioner submitted that the petitioner's application was not considered on merits and that as the petitioner has satisfactorily explained the reason for not being present in the Court on the date when the suit was dismissed for default.

5.This Court is of the view that the revision petition is liable to be dismissed with heavy costs as this Court is unable to find any *bona fides* in filing a second suit after considerable delay.

6.It is not in dispute that the first respondent in the Civil Revision Petition filed a suit in O.S.No.410 of 1989 on the file of the Principal District Court, Kumbakonam, for permanent injunction restraining the revision petitioner from interfering with his peaceful possession and enjoyment of the property. The said suit

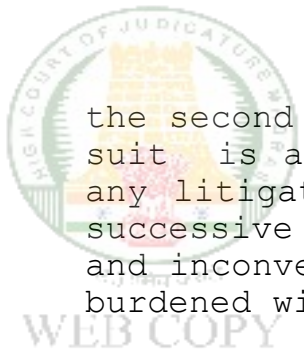


was decreed by judgment and decree dated 24.06.1994. It is stated by the counsel for the respondents that a further appeal as against the judgment and decree of the trial Court in O.S.No.410 of 1989 was also dismissed by the appellate Court.

7.Nearly, 15 years after the first suit, the revision petitioner has filed the present suit in O.S.No.332 of 2009 for the relief to nullify the decree of Civil Court in the earlier proceedings. The relief prayed for in the present suit is for a declaration that the plaintiff is a statutory tenant in respect of the suit property under the second defendant.

8.After suffering a decree in the earlier suit, the revision petitioner has approached the Record Officer under the Tamil Nadu Agriculturist Lands record of Tenancy Rights Act No.10/69 for a prayer to include his name in the Revenue Records as a cultivating tenant. Relying upon the order passed by the Record Officer on 24.11.2006, the revision petitioner started claiming a right which could not have not existed, having regard to the decree passed in the earlier suit in O.S.No.410 of 1989. In the plaint, the petitioner states that he was in possession and enjoyment of the property as a tenant and that he was regularly paying rent to the first defendant, namely, the plaintiff in the earlier suit in O.S.No.410 of 1989. It is further stated that the first defendant has sold the property to the second defendant on 05.03.1998 and that therefore, the plaintiff is now entitled to claim tenancy under the second defendant. The whole suit is on the basis of the order passed by the Record Officer, dated 24.11.2006, which was long after the decree in the first suit passed at the instance of first defendant in the suit.

9.When the suit was posted for hearing on 02.07.2012 that was dismissed for default for non-appearance of the revision petitioner. Hence the revision petitioner filed an application under Section 5 of the Limitation Act to condone the delay of 358 days in filing the petition to restore the suit. Since there was no reason given for the delay, the lower Court dismissed the petition. It is to be seen that the petitioner stated that came to know about the dismissal of the suit for default little later. However, the revision petitioner did not state as to when he came to know about the dismissal of the suit. From the affidavit, this Court is unable to find any reason to condone the delay of nearly one year. It is well settled that the petition to condone the delay if filed without giving any reason for the delay, the Court has no power or discretion to condone the delay. Only when the person comes to Court with proper explanation for the delay, the Court may exercise the discretion applying equitable principles. In this case, this Court has no reason to interfere with the order of the lower Court, having regard to the long history and the facts narrated in this case. Further, this Court is able to see that the revision petitioner has filed the



the second suit is a clear abuse of process of law. If a party to a suit is allowed to re-agitate the issue, there would be no end to any litigation and the litigants cannot be encouraged to come with successive suits for the same cause. It will cause great prejudice and inconvenience to the other side and Courts will be unnecessarily burdened with such vexatious litigations.

10. For the reasons stated above, this Court is inclined to dismiss the Civil Revision Petition with a cost of Rs.20,000/- payable by the revision petitioner to the respondents 1 & 2, within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

am

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Tahsildar,
Thiruvidaimarudur Taluk Office,
Thiruvidaimarudur & Taluk,
Thanjavur District.
- 2.The District Collector of Thanjavur,
Collectorate Buildings,
Thanjavur Town.

+1 CC to SGP (SR-17813[F] dated 23/09/2020)

C.R.P (MD)No.568 of 2015 (NPD)

22.09.2020

NR (06.10.2020) 4P 4C