

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).No.1347 of 2010

C.M.Kesavamurthy

...Petitioner

Vs

1.S.Srinivasan (died)
2.S.Kaliaperumal
3.Indirani
4.Senthil Kumar
5.Baskaran
6.Ilayaraja
7.Manjula
8.Kasthuri

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 12.09.2009 made in I.A.No.61 of 2009 in O.S.No.674 of 1993 on the file of the Additional District Munsif Court, Mayiladuthurai.

For Petitioner : Mr.K.V.Ananthakrushnan

For Respondents : Mr.S.Abu Backer Sidhic
for R4 & R6
R1 and R3 - Died
R2-Notice served-NA
R5, R7 & R8 - Not ready in notice

ORDER

The Civil Revision Petition is arising out of the fair and decretal order dated 12.09.2009 made in I.A.No.61 of 2009 in O.S.No.674 of 1993 on the file of the Additional District Munsif Court, Mayiladuthurai, thereby dismissing the petition to condone delay of 3708 days in filing the representation of the restoration petition.

2.The petitioner is the plaintiff, he filed the suit for possession of the suit schedule property. The suit was filed in the year 1991 and it is represented in the year 1993 and it was numbered as O.S.No.674 of 1993. After filing the written statements by the respondent herein, the said suit was dismissed for default on 29.11.1996. The petitioner is also an Advocate and he engaged one K.Subramaniam, as his counsel and filed a suit. After dismissal of the suit for default, immediately his counsel filed the petition to restore the said suit on 02.01.1997. It was returned for rectification of errors on so many occasions. Thereafter, the counsel on record failed to represent the petition to restore the suit. Further, the returned papers were mingled with other case bundles and as such the clerk of his counsel could not be able to represent the same in time. Unfortunately, thereafter his counsel Mr.K.Subramaniam died. Only on 07.02.2009, the petitioner had

gone to the office Mr.K.Subramaniam, and traced out the bundle. Thereafter, he engaged another counsel and represented the petition to restore the main suit with a delay of 3708 days. The same was dismissed.

3. Aggrieved by the same, the present Civil Revision Petition is filed.

4. The learned counsel for the petitioner would submit that though the petitioner is an Advocate by profession, he, as a party to the proceedings, appointed another counsel to represent on behalf of him and as such, the representing counsel died, after receiving order of default in the main suit on 29.11.1996. The petition to restore the suit was not represented in time. He further submitted that if the petition is allowed, there is absolutely no prejudice will be caused to the respondents and he has also ready and willing to pay the cost as fixed by this Court.

5. Per contra, the learned counsel for the respondents 4 and 6 would submit that the respondent filed the written statement as early as on 10.01.1994. In fact, the case of the respondents is that they are the cultivating tenant and purchased the suit property at the rate of Rs.26/- per kuzhi. A sum of Rs.12,402/- already paid to the plaintiff. In fact the

petitioner delayed in executing the sale deed in his favour. He also purchased 2.55 acres from the plaintiff and his brothers in the year 1975, and paid the entire sale consideration at the rate of Rs.28/- per kuzhi in the same village and also had taken possession of the said property. Further he submitted that the petitioner being an Advocate, he conducted another case in O.S.No.172 of 1996 by taking the bundle from the said Advocate, Mr.K.Subramaniam. He further submitted that the original plaint was presented before the trial Court on 05.08.1991, whereas, it was numbered only in the year 26.01.1993. in O.S.No.674 of 1993. After filing the written statement the petitioner and his counsel failed to appear before the trial Court for commencement of trial and as such the trial Court dismissed the case for default on 29.11.1996. The Court below dismissed the petition on the ground that the petitioner also filed another suit in O.S.No.172 of 1996 as against the same defendants on the file, where the earlier suit is also pending. In that suit the petitioner herein stood as a witness and appeared in the trial Court, which was also filed by the same counsel, i.e., Mr.K.Subramaniam. While being so, the petitioner might have easily taken the bundle from the office or he could have preferred the present petition,

within a reasonable period. Though the petitioner filed the petition to restore the suit in time, it was returned on several occasions for certain compliance. Finally, it was returned on 02.12.1998, permitting the petitioner to represent the same within a period of two weeks. Even then, it was not represented in time. It shows the attitude of the petitioner herein and as such the trial Court rightly dismissed the petition.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents 4 and 6 and also perused the materials available on record.

7. The petitioner is the plaintiff. He filed the suit as against the respondents herein for possession in respect of the suit property. After filing the written statement by the respondents, the petitioner failed to appear before the trial Court for trial and as such it was dismissed for default on 29.11.1996. Thereafter, the petitioner filed a petition to restore the suit on 02.01.1997 and it was returned for corrections. Though it was represented on three occasions, finally it was returned for some other corrections on 02.12.1998. Thereafter it was not represented by the counsel on record. Subsequently the counsel who appeared on behalf of the

petitioner Mr.K.Subramaniam died. After his death, the petitioner went to his office and received his bundle from the office only on 07.02.2009 and represented the same with a delay of 3708 days.

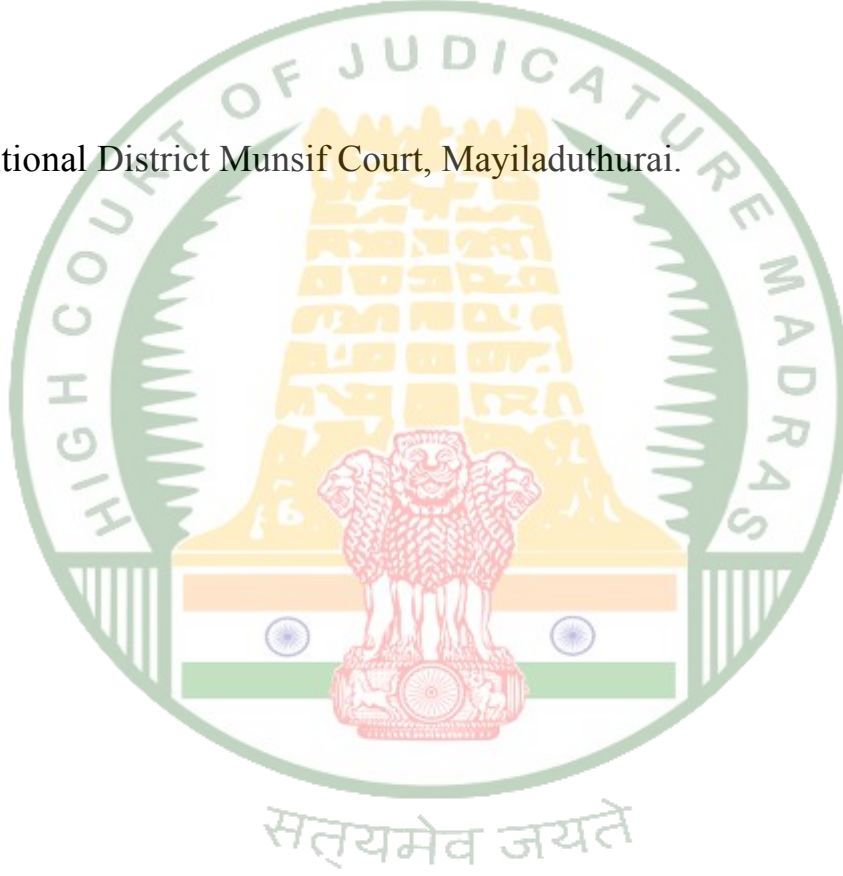
8.On perusal of records, the suit was originally presented on 05.08.1991, whereas, it was numbered only on 26.07.1993. Thereafter on 07.02.1994, issues were framed and posted the matter for trial on 29.11.1996. The petitioner was not present for commencement of trial and as such it was dismissed for default. Admittedly, the petitioner is an Advocate. Though the papers were mingled with other bundles he could have very well file a fresh petition to restore the suit. Further on perusal of the affidavit, the petitioner except the reason that the counsel who appeared on behalf of him died, no other sufficient reasons were furnished in the affidavit for the delay in representing the petition. Therefore, the trial Court rightly dismissed the petition and this Court finds no infirmity or irregularity in the order of the trial Court dated 12.09.2009 made in I.A.No.61 of 2009 in O.S.No.674 of 1993 on the file of the Additional District Munsif Court, Mayiladuthurai.

9.Accordingly, this Civil Revision Petition is dismissed. No costs.

27.01.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The Additional District Munsif Court, Mayiladuthurai.

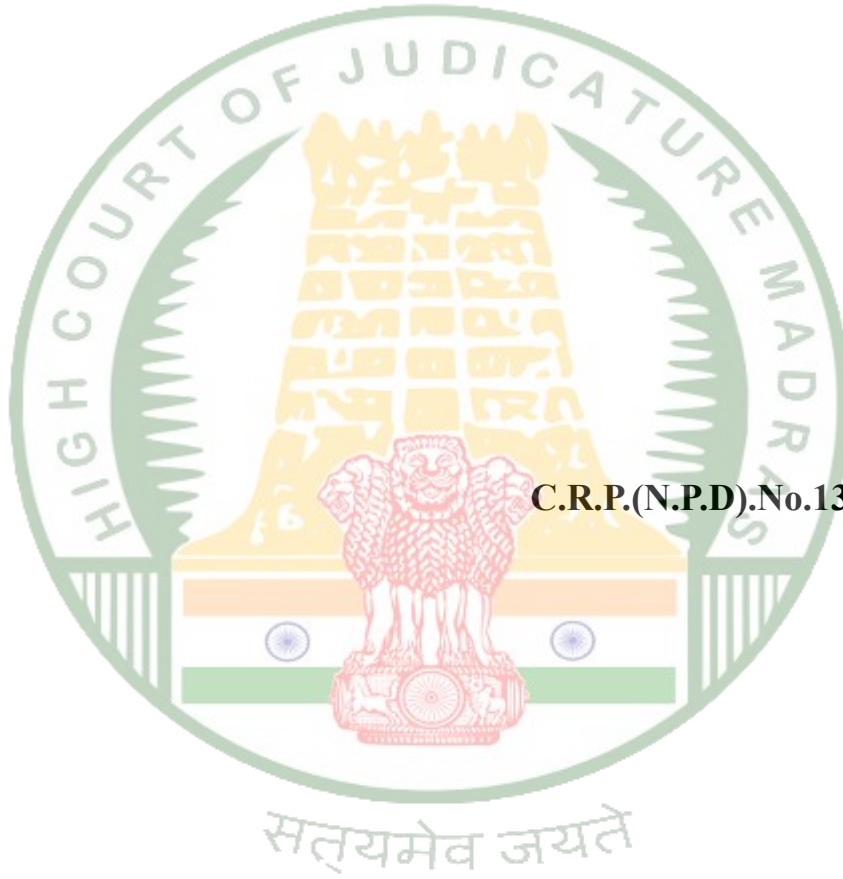


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