

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD) No.2842 of 2016

Shoba

... Petitioner

Vs.

Kalyanasundaram (died)

1. Sarojammal
2. Perma
3. Vijaya
4. Vasanthi
5. Umarani
6. Babu @ Kumararaja
7. Latha

... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal orders dated 28.04.2016 passed in I.A.No.7 of 2015 in unnumbered A.S.Nil of 2015 on the file of the Sub Court, Cheyyar.

For Petitioner : Mr.P.Mani

For Respondents

For R1 to R7 : Mr.E.Sathyaraj

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 28.04.2016 passed by the learned Sub Judge, Cheyyar in I.A.No.7 of 2015 in unnumbered A.S.Nil of 2015, thereby dismissing the petition filed by the petitioner to condone the delay of 622 days in filing the appeal suit.

2. The petitioner is the defendant in the suit filed by the deceased respondent/plaintiff. The deceased plaintiff filed suit for declaration, permanent injunction and also for mandatory injunction in respect of the suit schedule property and the suit decreed in his favour. According to the petitioner, thereafter there was a settlement talks were going on and also the plaintiff was fell in ill due to which, the petitioner did not prefer appeal suit within the time before the first appellate Court. Thereafter, the sole plaintiff died and the settlement talks were not completed. In fact, thereafter, the respondents also filed another suit in O.S.No.204 of 2014 for permanent injunction for very same suit property as against the petitioner and interim injunction was granted in their favour. Therefore, the petitioner did not file

any appeal suit in time and there is a delay of 622 days in filing the appeal suit. The Court below dismissed the said application for the reasons that the petitioner failed to mention the date of the death and also no sufficient reasons stated in the affidavit to condone the delay of 622 days.

3. The learned counsel appearing for the petitioner would submit that the petitioner and the deceased respondent are close relatives, who is none other than the paternal uncle. He was also fell ill due to his old age ailments. Therefore, there was a negotiation between them and pending negotiation unfortunately he died. Therefore, he could not be able to file the appeal in time. Further the suit is for declaration and mandatory injunction along with the prayer permanent injunction in respect of the suit schedule property. Therefore, the petitioner necessarily has to agitate in the manner know law and she may be given one more opportunity.

4. The learned counsel appearing for the respondent would submit that the original plaintiff was died two years back from the date of filing of the application to condone the delay in filing the appeal. Therefore

the petitioner has full knowledge about the death of the sole plaintiff. Further there was absolutely no negotiation in respect of settlement over the suit schedule property. In fact, the respondents also filed another suit in O.S.No.204 of 2014 for permanent injunction for the very same property. Further the petitioner had full knowledge about the death of the sole plaintiff and also she failed to state specific reasons for the delay in filing the appeal suit.

5. Heard Mr.P.Mani, learned counsel appearing for the petitioner and Mr.E.Sathyaraj, learned counsel appearing for the respondents 1 to 7.

6. The petitioner is the defendant in the suit filed by the deceased plaintiff. The suit was decreed and aggrieved by the same, the petitioner preferred an appeal suit with the delay of 622 days in filing the appeal suit.

The reasons stated in the affidavit filed in support of the condone delay petition are that there was a settlement talks between the petitioner and the deceased plaintiff. Therefore, she did not file the appeal suit in time.

Though the respondents filed suit in O.S.No.204 of 2014 as against the

petitioner for permanent injunction, the present suit was filed in respect of other reliefs. Further the petitioner may be given one more opportunity to challenge the decree of declaration in respect of the suit property.

7. In view of the above discussions, the order dated 28.04.2016 passed by the learned Sub Judge, Cheyyar in I.A.No.7 of 2015 in unnumbered A.S.Nil of 2015, is hereby set aside on condition that the petitioner shall pay a sum of Rs.5,000/- as cost to the respondents herein within a period of four weeks from the date of receipt of copy of this Order. The first appellate Court is directed to dispose the appeal within a period of six months from the date of numbering the said appeal.

8. With the above directions, this Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous is closed.

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Index : Yes/No

Speaking order/Non-speaking order

rts

G.K.ILANTHIRAIYAN, J.

rts

To

1. The Sub Judge,
Cheyyar.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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