

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.No.3352 of 2018

1.Lakshmi
2.Balasubramaniam
3.Janaki
4.Devaki
5.Mayilsami
6.Sakunthala

... Petitioners/Appellants/Petitioners

Vs

P.Sakthivel

... Respondent/Respondent/Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC, against the fair and decreetal order in I.A.No.616 of 2017 in ASCFR No.11203 of 2017 on the file of Principal District and Sessions Court at Thiruppur.

For Petitioners: M/s.Hema Sampath Senior counsel
for Mr.R.Mubarak Basha

For Respondent : Mr.S.Saravanan

O R D E R

This Civil Revision Petition is filed against the fair and decreetal order in I.A.No.616 of 2017 in ASCFR No.11203 of 2017 on the file of Principal District and Sessions Court at Thiruppur, thereby dismissing the petition to condone the delay in filing appeal suit.

2. The petitioners are the defendants in the suit. The respondent filed a suit for declaration and injunction in respect of the suit property. After contesting the suit, the suit was decreed as prayed for. Aggrieved by the same, the petitioners preferred first appeal with the delay of 1633 days in filing the appeal suit.

3. On a perusal of the affidavit filed in support of the condone delay petition, it revealed that though there are six defendants in the suit, except the second petitioner herein

others have not looked after the suit and all the other defendants assigned the second petitioner herein to contest the suit. Further revealed that, even on 18.11.2009 all the properties and including the suit properties are partitioned between the petitioners and as such no one looking after the suit and the second petitioner alone is looking after the suit.

4. Further, from 02.02.2013 onwards the second petitioner suffered from jaundice and as such he could not able to contact his counsel to know what happened the suit itself. Due to jaundice, he taken treatment on various places and finally he was treated with the native treatment. Because, he had called for his native treatment, he had no information about the Judgment of the suit. Only, on 15.12.2017 he came to understand about the Judgment that too decreed in favour of the respondent. Immediately, he instructed his counsel applied for certified copy of the Judgment to file an appeal suit. Therefore, there is a delay of 1633 days in filing the appeal suit. The cause for the delay is bonafide one. However, the Court below dismissed the petition to condone the delay for the reason that the petitioner did not state any sufficient cause for the delay of 1633 days.

5. The learned Senior counsel appearing for the petitioner submitted that the suit property along with other properties already partitioned between the second petitioner along with other petitioners and as such except the second petitioner no one is thereto looked after the case. The second petitioner suffered with jaundice and as such he could not be able to file the petition in time. Already the suit was decreed in favour of the respondent and he is enjoying the fruit of the decree. Therefore, no prejudice would be caused if the condone delay petition is allowed and the petitioner may be given one more opportunity to defend the suit filed by the respondent in the appeal, since the appeal suit is nothing but continuation of the suit proceedings.

6. Per contra, the learned counsel for the respondent would submit that the huge delay of 1633 days is not at all properly explained by the petitioners. There is absolutely no sufficient cause to condone the delay of 1633 days. He further submitted that Doctor Certificate produced by the petitioners is nothing but concocted one, since his own cousin brother who is the Doctor who issued certificate. Therefore, he prayed for dismissal of the Civil Revision Petition.

7. As stated supra, except the second petitioner no one is looking after the suit. The second petitioner also suffered with

jaundice and he had taken native treatments on various places. Therefore, he could not able to contact his counsel and also he did not know the result of the suit. Though there is inordinate delay of 1633 days in filing the appeal suit, the respondent is enjoying the fruit of the decree and the petitioners may be given one more opportunity to defend the suit filed by the respondent by way of appeal suit.

8. Accordingly, this Civil Revision Petition is allowed. The Order passed in I.A.No.616 of 2017 in ASCFR No.11203 of 2017 dated 28.03.2018 on the file of the Principal District and Sessions Court, Tiruppur is set aside. The petitioners are directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) as costs to the respondent directly within the period of two weeks from the date of receipt of a copy of this order. Failing which the order passed by this Court shall automatically stand cancelled. On such deposit, the Appellate Court is directed to number the appeal and dispose the same within the period of six months thereafter. No order as to costs.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

rna

To

The Principal District and Sessions Court,
Thiruppur.

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