



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.04.2021

Pronounced on : 19.04.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P(MD) No.553 of 2021

WEB COPY

- 1.S.Rajasekhar (died)
- 2.Uma
- 3.R.Sakthivel
- 4.R.Karthikeyan

: Petitioners/ Petitioners

Vs.

- 1.The Executive Officer,
Vilavoor Town Panchayat
Thukalay Village,
Kalkulam Taluk,
Kanyakumari District.

- 2.The President,
Vilavoor Town Panchayat,
Having Office at Vilavoor,
Thuckalay Village,
Kalkulam Taluk,
Kanyakumari District.

- 3.State of Tamil Nadu,
Represented by District Collector,
Kanyakumari at Nagercoil,
Agastheewsaram Taluk,
Kanyakumari District.

...Respondents/ Respondents

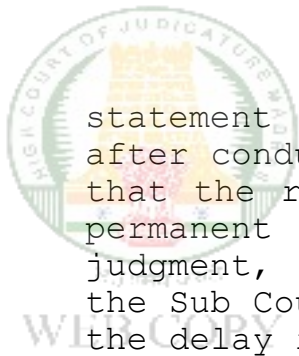
PRAYER:- Civil Revision Petition filed under Section 115 of Civil Procedure Code, to allow the civil revision petition and set aside the order and decretal order passed in I.A.No.1 of 2019 in A.S.SR No.6794 of 2018 on the file of Sub-Judge, Padmanabhapuram, dated 19.01.2021.

For petitioners : Mr. V.M.Balamohan Thambi

ORDER

This Civil Revision Petition is directed against the order passed in I.A.No.1 of 2019 in A.S.SR No.6794 of 2018, dated 19.01.2021, on the file of the Subordinate Court, Padmanabhapuram, dismissing the application filed under Section 5 of the Limitation Act.

2.The first revision petitioner, who is no more now, has originally filed a suit in O.S.No.279 of 2009 seeking the relief of permanent injunction on the file of the Principal District Munsif Court, Padmanabhapuram. The respondents have filed a written

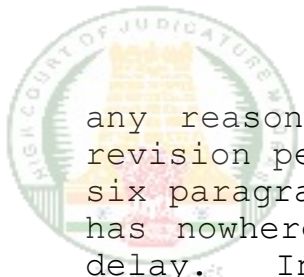


statement and contested the suit. The learned District Munsif, after conducting trial, has passed a judgment on 18.02.2011, holding that the revision petitioner was not entitled to get the relief of permanent injunction, dismissed the suit. Aggrieved by the said judgment, the first revision petitioner has filed an appeal before the Sub Court, Padmanabhapuram, along with an application to condone the delay in filing the appeal in I.A.No.6 of 2014 in A.S.SR.No.2690 of 2013 and that the learned Subordinate Judge, Padmanabhapuram, has passed an order dismissing the said petition vide order, dated 21.04.2017.

3.The revision petitioners 2 to 4, who are the legal heirs of the deceased first revision petitioner, filed a revision petition in CRP (NPD) (MD) No.32847 of 2018 before this Court challenging the dismissal order dated 21.04.2017 mainly on the ground that though the first revision petitioner had died during the pendency of the said I.A.No.6 of 2004, without bringing the legal heirs of the deceased, an enquiry was conducted and orders were passed on merits. Since the Registry of this Court raised an objection about the maintainability of the civil revision petition, after hearing the learned counsel for the revision petitioner, this court passed an order on 27.08.2018 sustaining the objection raised by Registry and gave an opportunity to the revision petitioner to file a fresh application for condonation of the delay in filing the first appeal and also directed the court below to exclude the delay occurred in prosecuting I.A.No.6 of 2014 in A.S.SR.No.2690 of 2013 and also the time taken for prosecuting the civil revision petition. Accordingly, the revision petitioners 2 to 4 have filed an application in I.A.No.1 of 2019 seeking orders to condone the delay of 1066 days in filing the appeal and that the learned Subordinate Judge, after conducting the enquiry and on hearing both sides, has passed the impugned order on 19.01.2021 dismissing the said petition. Aggrieved by the said order, the present civil revision petition came to be filed.

4.No doubt, as per section 5 of the Indian Limitation Act, it is for the applicant to plead and prove the sufficient cause for the delay occurred. It is settled law that the words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the applicant. Moreover, the decisive factor in condonation of delay is not the length of delay, but sufficiency of a satisfactory explanation. The extent or degree of leniency to be shown by a Court depends on the nature of the petition and the facts and circumstances of the particular case.

5.In the case on hand, a cursory perusal of the affidavit filed in support of the petition in I.A.No.1 of 2019 would reveal
<https://hccrtds.echis.gov.in/hccrtds/> petitioners have not at all canvassed or advanced



any reason or cause for the delay occurred. Though the third revision petitioner has filed an affidavit running to three pages in six paragraphs, he has only narrated what had happened so far and he has nowhere whispered any facts or particulars connected with the delay. In the affidavit, they have only stated that the delay caused is neither wilful nor wanton, that the same was caused beyond their control and that the same is liable to be condoned.

6.It is pertinent to mention that the revision petitioners in their affidavit, had specifically mentioned that there was a total delay of 2824 days and after excluding the delay of 1758 days as per the orders of this Court, still 1066 days delay is yet to be condoned. No doubt, the delay of 1066 days is inordinate. As already pointed out the revision petitioners have neither pleaded nor shown any reason or cause for condoning the delay. Hence, the question of deciding as to whether the cause shown by the revision petitioner are sufficient or not, does not arise at all.

7.The deceased first revision petitioner, in his plaint, has specifically admitted that the suit property was originally classified as "revenue promboke" belonging to the Government and by pleading that he had perfected his title by adverse possession, has claimed the relief of permanent injunction restraining the State Government and panchayat officials from interfering with his peaceful possession and enjoyment of the said property. The learned Trial Judge, by holding that the plaintiff therein has failed to prove that he had perfected the title by adverse possession and that the alleged cause of action was not also proved, dismissed the suit as early as on 18.02.2011.

8.As rightly pointed out by the respondents in their counter statement that the revision petitioners have been trying to keep the lis pending. Considering the above, the decision of the learned Subordinate Judge in dismissing the application cannot be found fault with and this court is in entire agreement with the order passed by the Sub Court, Padmanabhapuram. Consequently, this court is not inclined to admit the civil revision petition and the civil revision petition is liable to be dismissed.

9.In the result, this Civil Revision Petition is dismissed. No cost.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

The Subordinate Judge,
Padmanabhapuram,

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+1 CC to M/s.V.M.BALAMOHAN THAMBI, Advocate (SR-16425[F] dated
19/04/2021)

Order made in
C.R.P (MD) No.553 of 2021

19.04.2021

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