



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.660 of 2020

and

C.M.P. (MD) No.4368 of 2020

and

Caveat No.815 of 2020

WEB COPY

1.The District Collector,
Ramanathapuram,
Ramanathapuram District.

2.The Tahsildar,
Paramakudi Taluk,
Paramakudi.

.. Petitioners/Petitioners/
Defendants

-vs-

1.Fathima Beevi (Died)
2.Kajamohaideen
3.Nainamohammed
4.Sahulhameed

5.The Commissioner,
Paramakudi Town Panchayat,
Paramakudi.

6.Ramu (Died)
7.Muthandi (Died)
8.Balu
9.Mani
10.Shanmugavelu (Died)
11.Matharbeevee
12.Jainabeevee
13.Kathijabeevee
14.Bakeer Mohammed
15.Ibrahim Ali
16.Habiba Banu
17.Najeembanu
18.Mohaideen Fathima
19.Shek Abdullah @ Shek Mohammed
20.Abubacker
21.Ameer Abdulrahman

.. Respondents/Respondents/
Plaintiffs

Prayer :- Petition filed under Section 115 of Civil Procedure Code
to set aside the judgment and decree made in I.A.No.84 of 2018

<https://hdservices.courts.gov.in/hdservices>



dated 03.06.2020 in UF A.S.---- of 2008 on the file of Subordinate Judge, Paramakudi against O.S.No.101 of 2005 dated 29.11.2005 on the file of the District Munsif , Paramakudi.

For Petitioners : Mr.N.GA.Natraj,
Government Advocate
For RR3, 11 to 18 & 21: Mr.J.Barathan
for Mr.T.R.Jeyapalam

ORDER

This Civil Revision Petition is filed by the petitioners/defendants 1 and 2 against the order, dated 03.06.2020 passed in I.A.No.84 of 2018 in UF AS No.---- of 2018 on the file of the learned Subordinate Judge, Paramakudi, which was filed to condone the delay of 4496 days in filing the appeal challenging the judgment and decree in O.S.No.101 of 2005, dated 29.11.2005 passed by the learned District Munsif, Paramakudi.

The brief facts, necessary to dispose of this petition, are as follows:-

2. Respondents 1 to 4 herein had filed the suit in O.S.No.101 of 2005 on the file of the District Munsif, Paramakudi to declare their right to the suit property and consequently, restrain the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property.

2.1. The revision petitions were arrayed as defendants 1 and 2 therein and after contest, the suit was decreed on 29.11.2005. Challenging the said judgment and decree, the revision petitioners had filed the first appeal on the file of the Subordinate Court, Paramakudi, however with a delay of 4496 days.

2.2. In the affidavit filed in support of the petition to condone the delay, the revision petitioners have admitted that the certified copies have been received long back from the District Court. However, the Suit Clerk of the Paramakudi Taluk Office has misplaced the judgment and decree and consequently, the matter was not brought to the knowledge of the Tahsildar, Paramakudi. Further, the Tahsildar was being transferred every year and therefore, on account of the above factors, the appeal could not be filed in time. In fact, only when the notice in the execution proceedings had been received from the Court, the revision petitioners had come to know about the judgment and the fact that the appeal had not been filed in time. Immediately, certified copies were applied for from the District Court and the same was obtained on 19.04.2018, but the appeal should have been filed within 29.12.2005. That apart, the delay was also caused on account of the fact that the revision petitioners were not able to



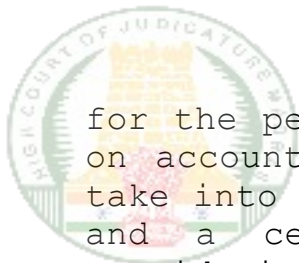
get in touch with their Government Pleader in the said appeal. In the process, the delay had occurred.

2.3. A very detailed counter has been filed by respondents 3 and 11 to 21 in which they have denied the allegations made in the affidavit filed in support of the application and have set out how the allegation contained in the affidavit does not portray the true facts.

3. It is the case of respondents that earlier, a suit in O.S.No.64 of 1984 had been filed by respondents 1 to 4 against the District Collector, Ramanathapuram; Tahsildar, Paramakudi Taluk; Commissioner, Paramakudi Municipality; and a few other private parties for a declaration of their title on the file of the Sub Court, Ramanathapuram. On 26.08.1987, the suit was decreed and the same was challenged in appeal by the petitioners herein in A.S.No.1044 of 1989 on the file of the Principal District Court, Ramanathapuram. The appeal was allowed and consequently, the 1st respondent and her son had filed L.P.A.No.129 of 2001 before this Court and this Court was pleased to set aside the judgment and decree passed by the Principal District Court by its judgment and decree dated 29.03.2001 and the matter was remitted back to the trial court with a direction to frame additional issues and grant liberty to file further evidence. Thereafter, the suit in O.S.No.64 of 1984 was transferred from the file of the Subordinate Court, Ramanathapuram to the District Munsif Court, Paramakudi, on account of the change in pecuniary and territorial jurisdiction. This suit was renumbered as O.S.No.101 of 2005. This suit was decreed on 29.11.2005 and from 29.11.2005 to 20.04.2018, the respondents have been filing writ petitions one after the other before this Court and in each of these proceedings, reference has been made to the judgment and decree in O.S.No.101 of 2005. Though the petitioners have been contesting all these applications and are aware of the judgment and decree dated 29.11.2005 in O.S.No.101 of 2005, they have not chosen to file an appeal. Therefore, the averments contained in the affidavit filed in support of the application were totally contrary to the records available with the revision petitioners themselves. The delay of 12½ years has not been explained.

4. The learned Subordinate Judge, Paramakudi, on a detailed consideration of the arguments and the records and also perusing the various judgments cited on either side, ultimately came to the conclusion that the revision petitioners have been highly negligent and have not explained the delay. Consequently, the application came to be dismissed. Challenging the said order, the revision petitioners are before this Court.

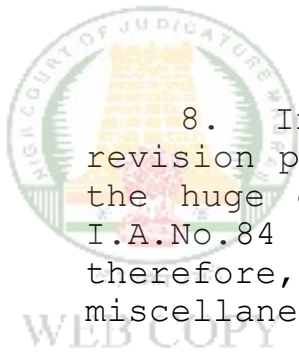
5. <https://hcservices.ecourts.gov.in/hcservices/> Mr. N. G. A. Natraj, learned Government Advocate, appearing



for the petitioners would submit that the delay has occurred only on account of the departmental bottlenecks and this Court should take into account the fact that the petitioners are the Government and a certain amount of relaxation should be given while considering such application filed on the side of the Government. Another factor to be taken note of is in the earlier rounds, the appeal filed by the revision petitioners had been allowed and it was only in the LPA, the matter had been remitted back. He would therefore, submit that this Court should take a holistic view taking into account the fact that the departmental glitches are inevitable while running a Government.

6. Mr.J.Barathan, learned counsel for respondents 3, 11 to 18 and 21 would submit that the very basis on which the affidavit for condoning the delay has been filed is that the revision petitioners had come to know about the judgment only when they have received the notice in the execution proceedings. This statement, on the face of the record, is absolutely false. In the counter filed by respondents 3 and 11 to 21 in the impugned application, they have in a very great detail set out the proceedings between the parties after the judgment in the suit in O.S.No.105 of 2005 on 29.11.2005. There was initiation of proceedings under Section 107 of the Criminal Procedure Code by the 2nd petitioner herein on 04.11.2017 against the 3rd respondent followed by many other proceedings. In every one of these proceedings, the respondents have been quoting the judgment and decree in their favour. In fact, to a notice dated 29.11.2013, by the Junior Engineer, Parthibanur Cliff Dam, the respondents have filed a counter enclosing the judgment and decree in O.S.No.105 of 2005. This is the first of the proceedings that has taken place post the judgment and decree. Despite being put on notice, even as early as on 16.12.2013, about the judgment and decree, the petitioners herein have not cared to file the appeal and further suppressing all these facts, an affidavit has been filed stating that the revision petitioners had come to know about the judgment and decree only when notice in the Execution Proceedings had been filed.

7. Perusal of the affidavit filed in support of the application would show that the order copy had been immediately received by the revision petitioners and it is their case that this judgment and decree had been misplaced. Thereafter, they have applied for a fresh copy of the judgment and decree in the year 2018 and preferred this appeal. Therefore, it is clear that the revision petitioners have not come before this Court with the true facts and have made allegations suppressing the fact that there has been several correspondence between the revision petitioners and respondents from the date of the judgment itself.



8. In the result, this Court is of the opinion that the revision petitioners have not given sufficient cause for condoning the huge delay. Therefore, the order dated 03.06.2020 made in I.A.No.84 of 2018 is confirmed. The Civil Revision Petition is, therefore, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

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Sub Assistant Registrar(CS)

Abr

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 Sub Judge, Paramakudi.
- 2.The District Munsif, Paramakudi.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-38996[F] dated 16/12/2021)
+1 CC to M/s.SPL GP (SR-39019[F] dated 16/12/2021)

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PS (CO)
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