



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2021

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.819 of 2020

1) Nachammal
2) Alagammal
3) Adaikkammal
4) Gandhiraj
5) Chinnathambi

... Petitioners

vs.

1) Mr. Mohamed Yahoob
2) Mr. Khaja Maideen

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order dated 18.02.2020 passed by the learned Subordinate Court, Melur, in I.A.No.416/2019 in A.S.No.Unnumbered/2019 and allow the application on merits.

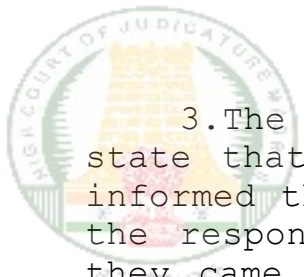
For Petitioners : Mr.AK.Gopalan

For Respondents : Mr.S.A.Ajmalkhan

ORDER

Aggrieved by the dismissal of the condone delay petition in filing the appeal, this revision petition has been filed.

2.The respondents/plaintiffs filed a suit in O.S.No.25 of 2010 against the revision petitioners/defendants for declaration and permanent injunction in respect of the suit property. After hearing both sides, the above suit was decreed by judgment and decree dated 16.09.2017. The revision petitioners/defendants filed an application in I.A.No.416 of 2019 to condone the delay of 349 days in filing the appeal. The said I.A has been dismissed on 18.02.2020, against which, the present revision petition has been filed.



3.The learned counsel for the petitioners/defendants would state that the counsel for the petitioners in the suit had not informed the petitioners about the suit proceedings and only when the respondents came to the suit property to measure the same, they came to know about that the suit was decreed on 16.09.2017 and immediately they engaged another advocate to obtain the judgment and decree passed in the suit and filed the above appeal and in that process, the above delay of 349 days occurred. He would further state that the revision petitioners have got good case on merits and the Court below ought to have taken pragmatic view in considering the delay condonation petition and instead of throwing the matter on technicalities, the Court below ought to have condoned the delay to enable the revision petitioners to contest the appeal on merits. Thus, he would pray to set aside the impugned order.

4.Heard the learned counsel for the petitioners as well as the respondents.

5.Perusal of record shows that the suit has been filed for declaration and permanent injunction in respect of the suit property. The plaintiffs' side evidence was closed on 01.08.2017 and the suit was posted for the defendants' side evidence on 10.08.2017 and since no witness was let in on the side of the defendants, the trial Court closed the defendants side evidence stating that no reason has been assigned for not letting any evidence and passed the judgment and decree dated 16.09.2017 decreeing the suit as prayed for. The suit is of the year 2010 and it was pending for nearly 7 years and it is very unfortunate that the revision petitioners/defendants did not take any steps to know the proceedings of the suit from 2011 to 2017 and the reason for condonation delay is that their counsel in the suit had not informed the proceedings of the suit and the passing of the judgment in the suit and only when the respondents/plaintiffs came to the suit property to measure it, they came know the suit has been decreed in 2017 which shows that the petitioners were not even interested in prosecuting the suit from 2011 to 2017. Except accusing the advocate for the delay, no other reason has been stated for the huge delay. The petitioners ought to have been vigilant in prosecuting the suit and the reason cited for condonation of delay is not an acceptable reason for such huge delay and the learned Judge has rightly dismissed the I.A for condoning such a huge delay and therefore, by applying the principles in the judgment in **Esha Bhattejee vs. Managing Committee of Raghunathpur** reported in **2013 (5) CTC 547**, I do not find reason to interfere with the order passed by the learned Judge.



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

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

The Subordinate Judge,
Melur.

Copy to
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to Mr.S.A.AJMAL KHAN, Advocate (SR-10738[F] dated
12/03/2021)

ORDER MADE IN
CRP(MD)No.819 of 2020
DATED : 10.03.2021

KM (26.03.2021) 3P 5C