



C.R.P.No.1498 of 2021
and C.M.P.No.11786 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2022

CORAM :

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1498 of 2021

and

C.M.P.No.11786 of 2021

1. Neela

2. Sambasivan

... Petitioners

Vs.

1. Kaliyammal

2. Ramu

3. Sasikumar

4. Arunkumar

5. Jayanthi

6. Abinaya

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 CPC against the fair and decreetal orders of the learned District Munsif and Judicial Magistrate, Pochampalli, dated 07.09.2020 in I.A. No.266 of 2014 in O.S. No.44 of 2012.

For Petitioners : Mr. V. Nicholas

For Respondents : Mr. K. Bijai Sundar

Dr. R. Sunitha Sunder &

Mr. S. Ganesan



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ORDER

The revision petitioners are the plaintiffs in O.S. No.44/2012. They filed the suit for declaration of their title to the suit property and for a consequential relief of permanent injunction. They have also prayed for a declaration that the Gift deed dated 06.06.2012 executed by the 1st defendant in favour of the 4th & 5th defendants is null and void and for a mandatory injunction directing them to execute a registered rectification deed to rectify the mistake in the survey numbers mentioned in their sale deed dated 19.02.1990.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court in the Original Suit and in appropriate places, their ranking in the present petition would be indicated.

3. The case of the plaintiffs flows as follows:

The suit property was owned by the 1st defendant which she inherited from her father. In 1989 and 1990 she sold the same consisting



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of two bits of 20 cents and 25 cents in S.No.336A of Thimminaickampatti Village, Krishnagiri. According to the plaintiffs the sale deed dated 19.02.1990 had a mistake committed by the document writer who had written as S.No.366A instead of 336A. Once the mistake was detected by the plaintiffs, they brought it to the knowledge of the defendants 1 to 3 and the document writer had made the corrections on the sale deed itself. Based on this sale deed, the revenue authorities had issued patta after subdividing the land into 336/3 and 336/5 in favour of the 1st plaintiff. The 1st plaintiff in turn gifted the property in S.No.336/5 to her son, the 2nd plaintiff through a registered gift deed dated 24.08.2005. Consequently, the patta was also transferred in his name. In such circumstances, the 1st defendant had illegally created a bogus gift deed dated 06.06.2012 in favour of the defendants 4 & 5 for the suit property which is clearly null and void.

4. The defendants on their part defended the suit by stating that the properties in S.No.336A was never sold to anyone much less to the 1st plaintiff and the so called sale deed dated 19.02.1990 was totally bogus



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and created by the 1st plaintiff to usurp the properties of the defendants.

5. The said suit was dismissed for default on 04.12.2013 since the plaintiffs did not appear before the court. The plaintiffs thereafter filed a petition under Order IX Rule 9 CPC to restore the suit which was dismissed for default along with an application in I.A. No.266/2014 under Section 5 of the Limitation Act to condone the delay of 312 days in filing the petition under Order IX Rule 9 CPC. The respondents filed their counter and after full contest, the learned District Munsif cum Judicial Magistrate, Pochampalli, dismissed the said application citing the following reasons:

- i. The reason cited by the 1st plaintiff for non appearance in the court was her ill health and taking medical treatment at Coimbatore. However, it was revealed that she used to go for treatment only during weekends and during the relevant period of two months November-December 2013, she had not availed any leave and had attended duty as an employee in Anganvadi, Pochanpalli.



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ii. The court also wondered as to how the 1st plaintiff could not attend the court but was able to go for duty without any break during the period.

iii. The trial court also pointed out that though she had mentioned that she was suffering from Asthma, her medical certificate showed that she was suffering from skin decease. She was not also aware of the name of the doctor who treated her.

For these reasons the trial court found that her excuses for not appearing before the court in a suit filed by her is totally unconvincing and therefore the trial court dismissed the application vide its orders dated 07.09.2020.

6. Heard Mr. V. Nicholas, learned counsel for the revision petitioners and Mr. K. Bijai Sundar, learned counsel for the respondents.

7. On a thorough scrutiny of arguments on both sides, it can be found that the petitioners lacked *bona fides* and therefore do not come within the exception to the "rule of liberal approach". It is well settled that the question of limitation is not merely a technical consideration but is



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based on principles of sound public policy and equity. In ***Sundar Gnaolivu rep. by his power of attorney agent Mr. Rukmini vs. Rajendran Gnanavolivu, rep. by its power of attorney agent Veina Gnanavalivu***) reported in 2003 1 LW 585, the Division Bench of this Court held that when the averments in the affidavit are untrue, lack bona fides, then the case falls within the exception to the Rule of Liberal approach and it does not deserve the liberal approach formula in matters relating to condonation of delay. In this case, the Division Bench of this Court followed the decision of the Honourable Supreme Court reported in *M.K.Prasaf vs. P. Arumugam* (2001) 6 Supreme Court Cases 176. In Para Nos. 14-A and 15, the Division Bench of this Court held thus:-

"14.If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he cannot say that no prejudice would be caused to the other side by the delay being condoned. The other side would have in all probability destroyed the records thinking that the records would not be relevant as there was no further



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In the instant case, the plaintiffs have observed a stoic silence after filing the original suit making it appear that the other party and the court have to wait to resolve the dispute at the time when the plaintiffs want it. The 1st plaintiff in the I.A. came up with such excuses which were blatantly incorrect and false. The 1st plaintiff has exhibited a recalcitrant attitude towards the entire matter and could not explain the inordinate delay of 321 days despite a clear opportunity afforded to her. Thus she has tried to be a law unto herself by remaining inactive for no reason and



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thereby making it clear that the delay was a deliberate one. Therefore, she has lost her right to have her matter considered on merits. She has also lost her right to plead that substantial justice deserved to be preferred as against technical considerations.

8. In the result,

- i. the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is dismissed.
- ii. the fair and decreetal orders of the learned District Munsif and Judicial Magistrate, Pochampalli, dated 07.09.2020 in I.A. No.266 of 2014 in O.S. No.44 of 2012, is upheld.

07.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To,

The District Munsif and Judicial Magistrate, Pochampalli.

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R. HEMALATHA, J.
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