



CRP (NPD) No. 3038 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (NPD) No. 3038 of 2017

K.Thottan

... Petitioner/petitioner/Appellant

Vs

M.Madhevan

... Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 07.12.2016 made in I.A.No. 79 of 2016 on the file of the Subordinate Judge Court, Sathyamangalam in A.S.No. of 2016 in C.F.R.No. 4043 of 2016.

For Petitioner : Mr. M.Roshan Atiq

For Respondent : Mr. I.C.Vasudevan

ORDER

This Civil Revision Petition has been filed by the defendant in O.S.No. 157 of 2011, which had been decreed by the learned District Munsif, Sathyamangalam, by Judgment and Decree dated 27.08.2014.



2. Such suit had been filed for permanent injunction restraining the present revision petitioner from interfering with the respondent/plaintiff's peaceful possession and enjoyment of the suit property and for costs.

3. The suit property was Manavari land measuring 2 acres with a right to use the cart track in Kuthiyalathur Village, Sathyamangalam, Coimbatore, Erode District in S.No. 43/2, old S.No. 1433/2.

4. The revision petitioner has stated that he had contested the suit and during the course of trial had already examined three witness and had also marked two documents. He had also cross examined the witness for the plaintiff. Thereafter, aggrieved by the said Judgement of the trial Court, he had filed a First Appeal before the Sub Court at Sathyamangalam. However, there was a delay of 688 days. He then filed I.A.No. 79 of 2016 to condone the delay in filing the First Appeal. That application was dismissed necessitating filing of the present Revision Petition.



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5. In the order which had been passed by the learned Sub Judge, it had been observed that though the revision petitioner had pleaded that he had been afflicted with various illnesses and also by joint pains and therefore, could not give instructions to his counsel to file the Appeal, it had been stated that no further details had been given and that the details of medical records had also not been produced. Therefore, the said reasons given by the revision petitioner herein had not been taken into consideration by the learned Sub Judge, who proceeded to dismiss the said application.

6. It must be kept in mind that the First Appeal is a continuation of the trial and both issues on facts and law will have to be re-examined in the course of the First Appeal .

7. It is also seen that in the instant case, it is the specific case of the revision petitioner/defendant that his father had sold the land to the respondent/plaintiff and he questions such sale deed. The issue of possession has also been examined and that has been decided in favour of the respondent/plaintiff.



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8. Be that as it may, various reasons had been given by the petitioner herein seeking to condone the delay for 688 days and they primarily revolve around alleged sickness / illness and taking medical treatment. This had been adversely noted by the learned Sub Judge who stated that such statements had not been established in manner known to law.

9. I would rather give an opportunity to the revision petitioner to establish such facts by grazing the witness box and stating as to the nature of the illness he suffered and how it prevented him from giving instructions to his Advocate for preparing the First Appeal. If he is in possession of the medical records, then necessary records may also be produced. This would also given the respondent/plaintiff to cross examine the present petitioner on the reasons given and if the records are not produced, the respondent/plaintiff can also urge that the Court should take advantage of Section 114(g) of the Evidence Act by which adverse evidence can be drawn by the Court, if, the records are not produced, that such records are



not produced only because they would speak adverse to the interest of the revision petitioner herein.

10. These are aspects which should be examined, particularly because, the parties are litigating over the right of a property. It would only be appropriate that opportunity is given to both of them to put forth their case in all the forums laid down by law. Therefore, I would interfere with the order under revision and set it aside.

11. Hence, this Civil Revision Petition is allowed, by remitting the matter back to the Sub Judge, Sathyamangalam, for fresh disposal by giving an opportunity to both the revision petitioner and to the respondent to lead evidence and also to test the evidence through cross examination.

12. Let me make it clear that such exercise of recording evidence should be completed by the learned Sub Judge, who should strive to dispose I.A.No. 79 of 2016 on or before 30.09.2022.



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Vsg

13. With the above observation, this Civil Revision Petition stands allowed. No costs.

28.02.2022

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. Subordinate Court, Sathyamangalam.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.

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