



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.1203 of 2021

WEB COPY

Karuppaiah

.. Petitioner/Petitioner/
Plaintiff

-vs-

Madasamy (Died)

1.Suppammal
2.Samuthiram
3.Natarajan
4.Saraswathi
5.Yovan

.. Respondents/Respondents/
Defendants

Prayer :- Petition filed under Section 115 Civil Procedure Code to call for the records pertaining the order dated 26.02.2021 made in I.A.No.171 of 2018 in O.S.No.01 of 2008 on the file of the Additional Subordinate Judge, Thenkasi and set aside the same and also pass appropriate orders.

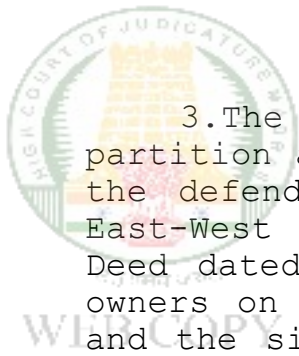
For Petitioner : Mr.M.Maran
For RR1, 2 & 5 : Mr.T.S.Mohamed Mohideen

ORDER

Challenging the order dated 26.02.2021 made in I.A.No.171 of 2018 in O.S.No.1 of 2008 filed for condoning the delay of 3329 days in restoring the suit, the plaintiff is before this Court.

2.The brief facts are as follows:-

2.1.The plaintiff had filed the suit in O.S.No.1 of 2008 on the file of the Principal Subordinate Court, Tenkasi for the relief of partition. The plaintiff had contended that the property belonged to the father of the plaintiff and the defendant, Chappani and was a self acquired property. On his death, the property devolved on the plaintiff and the defendant and their other brothers and sisters. On 26.12.1991, the legal heirs had entered into an oral partition and they had also been put in possession of their respective shares. The suit property has been allotted jointly to the plaintiff and the defendant and each of them had a $\frac{1}{2}$ share in the same. When the plaintiff had sought for a partition, the defendant did not come forward to partition the same and therefore, he has been constrained to file the suit.



3.The defendant had filed a written statement denying the said partition and stating that it is a rank forgery. It is the case of the defendant that originally the suit property measured 20 feet East-West and this property was purchased by his father under Sale Deed dated 22.06.1960. Over a period of time, the adjacent land owners on the East and West had encroached into the suit property and the site got reduced to an extent of 18 feet East-West. The defendant would submit that in 1963, his father Chappani had sold the property to him and he has been in possession and enjoyment since then. The property so sold measured 9 standard feet East-West and 32 feet North-South. Likewise, an extent of 9 feet East-West and 52 feet North-South was gifted by Chappani to the defendant under a deed dated 13.07.1984. He has been in possession and enjoyment of the same. On 26.10.2006, the defendant had executed a settlement in favour of his daughter Saraswathi. Another extent was settled on his son Samuthiram under a Deed dated 24.10.2007. The defendant would therefore state that the plaintiff has no right to the suit property. The defendant had also pleaded non-joinder of necessary party and also estoppel.

4.When the suit was posted for trial on 05.01.2009, the plaintiff did not appear before the Court and therefore, the suit was dismissed for default. The plaintiff has, therefore, come forward with the impugned application for condoning the delay of 3329 days in filing the petition for restoring the suit. In the affidavit filed in support of the said application, the plaintiff would contend that he had been suffering from diarrhoea since 30.12.2008 and therefore, he could not meet his counsel. By reason of this, his health had deteriorated and consequently, his son taken away him to Chennai and it is only on 05.02.2018, when he met his counsel, he came to know about the dismissal.

5.The defendant had filed a counter *inter alia* contending that the reason given is a concocted one and the plaintiff, who is well aware that he will not be able to substantiate his claim, has decided to stay away from the proceedings and now with the intent of harassing the defendant, has come forward with the present application. The learned Additional Subordinate Judge, Tenkasi, by his order dated 26.02.2021, has dismissed the application. Challenging the same, the petitioner is before this Court.

6.Heard the learned counsel on either side.

7.The only reason given in the affidavit for the non-appearance of the plaintiff on 05.01.2009 and the subsequent delay in filing the application is that he has been suffering from the above ailment for 3329 days. This very clearly shows that the plaintiff has stayed away from the Court without sufficient cause and now for reasons best known to him, has come forward with the present application. The delay is nearly 10 years and no prudent litigant would have remained himself unaware of the proceedings. The learned



Additional Subordinate Judge, Tenkasi, by his order, dated 26.02.2021 has rightly dismissed the application and I do not wish to set aside the same. Consequently, this Civil Revision Petition stands dismissed. No costs.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

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

The Additional Subordinate Judge,
Tenkasi.

COPY TO:-

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.T.S.MOHAMED MOHIDHEEN, Advocate
(SR-1083[F] dated 10/01/2022)

C.R.P. (PD) (MD) No.1203 of 2021

Dated: 10.01.2022

NSN(CO)

GC(08.02.2022) 3P 5C