



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2022

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.1254 of 2014

1.M.Karthik (died)
2.M.Balasubramanian
3.Anitha
4.Minor Thejaswin
5.Minor Aradhana
(Minors represented by Guardian and
Next Friend Mother Anitha) ... Petitioners

Petitioners 3 to 6 are brought on record as
LRs of the deceased first petitioner vide Court
order dated 26.11.2021 made in
CMP(MD) Nos.5677 to 5679 of 2021

Vs .

1.Dellidurai
2.Muthukani(died)
3.Chandra
4.Logarani
5.Kasimayan
6.Pandi ... Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of
Constitution of India, to set aside the fair and decreetal order in
I.A.No.369 of 2011 in O.S.No.57 of 2005 dated 17.04.2014 on the file
of the learned District Munsif Cum Judicial Magsitrate No.I,
Usilampatti and allow this civil revision petition.

For Petitioners : Mr.Sathis Kumar
for Mr.Subash Babu
For R1, R3, R4
and R6 : Mr.J.Barathan
For R5 : No appearance

ORDER

The plaintiffs are before this Court challenging the dismissal
of their application to condone delay of 312 days in filing the
application to restore the suit, which was dismissed for default on
02.02.2010.



2.For the sake of convenience, the parties shall be referred to as per their rank in the suit.

3.The facts necessary for disposal of the above revision are as follows:-

WEB COPY (i) The plaintiffs had filed the suit O.S.No.57 of 2005 on the file of the learned District Munsif Cum Judicial Magistrate No.I, Usilampatti, for a bare injunction. When the suit was posted for trial on 02.02.2010, the plaintiffs had not appeared before the Court and the matter was dismissed for default. The plaintiffs have therefore, filed I.A.No.369 of 2011 (which is the petition impugned in this revision) for condoning delay of 312 days in filing the restoration application.

(ii) In the affidavit filed in support of the said application, the revision petitioners would contend that when the matter was listed on 02.02.2010, the plaintiffs had gone to another state for eking out their livelihood and at that time, the second plaintiff had been affected with jaundice and the first plaintiff had to take care of him. It was at this juncture the suit was posted in the list and the plaintiffs were unable to appear before the Court. It is only now that they had come out the village, met their counsel and came to know that the suit had been dismissed. They have immediately taken steps to file the application.

(iii) The first defendant had filed a counter in which he has denied the contention of the plaintiffs. The first defendant would submit that a criminal case in C.C.No.261 of 2005 was pending against the plaintiffs and their mother before the learned Judicial Magistrate No.I, Usilampatti on the basis of a complaint given by the defendants. The plaintiffs and their mother Seeniammal were regularly attending the hearing of this calender case. That apart, their mother Seeniammal had filed another complaint against the defendants in C.C.No.260 of 2005. After the dismissal of the suit for default, Seeniammal was attending the Revenue Court in the proceedings relating to the transfer of patta and there are number of complaints given by her against the first defendant and his family members. Therefore, the reason given in the affidavit filed in support of the impugned petition that they were away from the village, is absolutely false.

(iv) The learned District Munsif cum Judicial Magistrate No.1, Usilampatti, by his order, dated 17.04.2017, was pleased to dismiss the application. The learned judge has held that the affidavit lacks clarity regarding the period during which the second plaintiff was affected with jaundice. Further on 04.07.2005, the plaintiffs have settled the property on their mother. Immediately, after the dismissal of the suit for default, the plaintiffs had filed an application under Order 13 Rule 9 CPC for withdrawing all the ~~documents~~ ~~documents~~ ~~documents~~ by them in the suit. The said petition was also



ordered. Therefore, the contention of the plaintiffs that they were not aware about the dismissal of the suit is false.

4.Heard the learned counsel appearing on either side and perused the records.

WEB COPY

5.From a perusal of the records, it is seen that the respondents/defendants have filed the document to show proof that the plaintiffs were aware about the dismissal of the suit for default as soon as, orders were passed. The first action taken by the plaintiffs pursuant to the dismissal is to file an application under Order 13 Rule 9 of CPC to take back all documents filed by them. This document has been marked as Ex.C1. That apart, they have also filed documents to show that the criminal and revenue proceedings have been pending between the parties. On perusal of the above, it is clear that the plaintiffs have come to Court with a false case and unclean hands. The Court therefore cannot come to the rescue of a litigant, who comes to Court with the false case. Therefore, I do not find any reason to interfere with the findings and order of the Court below.

6.In the result, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 District Munsif Cum Judicial Magsitrate No.I,
Usilampatti.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-416[F] dated 05/01/2022)

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-492[F] dated 05/01/2022)

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