



CRP NPD(MD)No.1289 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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1.K.S.M.Janiulabudeen @ Kaja Mohaideen
through his power agent,
K.S.Abdul Barakath

2.K.S.M.Fathima Natchi

... Petitioners

Vs

1.Maikhale Fernando
2.Rayappan
3.K.S.M.Mohammed Hussain

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree in I.A.No.82 of 2010 in O.S.No.87 of 2000 on the file of the learned District Munsif cum Judicial Magistrate Court, Rameswaram dated 12.01.2011.

For Petitioner	: Mr.S.A.Ajmalkhan
For R1	: No appearance
For R3	: Mr.P.Thiyagarajan



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ORDER

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This Civil Revision Petition is filed as against the fair and decreetal order passed in I.A.No.82 of 2010 in O.S.No.87 of 2000, on the file of the learned District Munsif cum Judicial Magistrate Court, Rameswaram on 12.01.2011.

2.The petitioners are the plaintiffs in O.S.No.87 of 2000, which was filed before the District Munsif cum Judicial Magistrate Court, Rameswaram, for the relief of permanent injunction against the third respondent not to alienate the suit property and not to alter the physical features of the suit property. The suit was dismissed for default on 12.06.2006 and he came to know about the dismissal order only on 07.03.2010. Thereafter, the petitioner has taken out an application in I.A.No.8 of 2010 to restore the suit along with the application, under Section 5 of Limitation Act to condone the delay of 1351 days in filing the petition to restore the suit. The said application was dismissed by the trial Court, considering the conduct of the petitioner that when the suit was ripe for trial, he allowed the suit to get dismissed for default twice and this is the third time the petitioner has taken



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out similar application and that too without assigning any valid reasons for such inordinate delay of 1357 days in preferring the petition to restore the suit. Aggrieved over the same, the present Civil Revision Petition is filed.

3.The learned counsel appearing for the petitioners submits that the suit was originally pending before the District Munsif Court, Rameshwaram and it was subsequently transferred to Subordinate Court, Ramanathapuram and therefore they could not contact their Advocate to ascertain the stage of the suit. He further submits that the first petitioner was working in abroad at the relevant point of time and therefore he could not contact the counsel. He further submits that the delay occurred is not willful. Hence, he prayed to set aside the order of the trial Court.

4.The learned counsel for the respondent submits that the suit itself was filed on knowing that the respondents/defendants sold the property to the first respondent with an intention to harass the respondents/defendants. Hence, there is no need to interfere with the order of the trial Court.



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5.This Court considered the rival submissions and perused the materials placed on record.

6. Originally, the suit in O.S.No.87 of 2000 was filed by the petitioners/plaintiffs for the relief of permanent injunction before the District Munsif Court, Rameshwaram. The suit was dismissed for default on 12.06.2006. It is the contention of the petitioners' counsel that they came to know about the dismissal of the suit only on 07.03.2010 and thereafter the petitioners preferred I.A.No.8 of 2010 to condone the delay of 1357 days to restore the suit. The reason assigned for such inordinate delay is that the suit was originally instituted before the District Munsif cum Judicial Magistrate Court, Rameswaram and subsequently it was transferred to the Sub Court, Ramanathapuram. Since the petitioners could not contact their counsel after 2006, the delay of 1357 days has been occurred. The trial Court has considered that the transfer application itself is filed at the instance of the petitioners/plaintiffs referring the another suit for partition filed by these petitioners/plaintiffs pending before the Sub Court, Ramanathapuram and got an order for transferring the suit and the said suit has been transferred from



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the District Munsif Court, Rameshwaram to the Subordinate Court, Ramanathapuram. It is also stated in that order that when the suit was ripe for trial, the petitioner allowed the suit to be dismissed for default on two occasions. Considering the conduct of the petitioners/plaintiffs and also taking into account the inordinate delay in filing the application to restore the suit, the trial Court rightly dismissed the application.

7.In view of the above, this Court is not inclined to entertain this Civil Revision Petition and accordingly, this Civil Revision Petition is dismissed. No costs.

30.06.2022

Index : Yes / No.

Internet : Yes / No.

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To

- 1.The District Munsif cum Judicial Magistrate Court, Rameswaram.
- 2.The Subordinate Court, Ramanathapuram.



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B.PUGALENDHI, J.

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