



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.03.2022
DELIVERED ON	13.04.2022

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No.1832 of 2021

and

C.M.P. (MD)No.9831 of 2021

1.T.Sivakumar
2.T.Rajeshwari

...Petitioners/Respondent/Respondents/
Plaintiffs

Vs.

The Commissioner,
Rajapalayam Municipality,
T.P.Mills Road,
Rajapalayam Town,
Virudhunagar District.

...Respondent/Petitioner/Petitioner/
Defendant

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 06.09.2021 made in I.A.No.1 of 2020 in UF A.S. on the file of learned Principal District Judge, Virudhunagar District at Srivilliputhur, set aside the same and allow tis Civil Revision Petition.

For Petitioners :Mr.V.Janakiramulu

For Respondent :Mr.N.Dilip Kumar

ORDER

This Civil Revision Petition has been filed by the petitioners to set aside the order, dated 06.09.2021 in I.A.No.1 of 2020 in Unnumbered Appeal Suit on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputhur.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The defendant has filed a petition in I.A.No.1 of 2020 in unnumbered appeal suit on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputhur, under Order 41 Rule 3(A) of Civil Procedure Code, to pass an order to condone the delay



of 1982 days in filing an appeal. The said petition was allowed on 06.09.2021. Aggrieved over the same, the plaintiffs are before this Court.

4. Heard on either side and perused the material documents available on record.

5. The Civil Revision Petition is filed on the ground that the Court below erred in accepting the reasons adduced by the respondent that death of the Standing Counsel was not communicated to the respondent. The Court below having held that the reasons adduced by the respondent in the delay application were supported by evidence, no such evidence is placed on record by the respondent and hence, the finding passed by the Court below is untenable and incorrect.

6. The defendant has filed a petition in I.A.No.1 of 2020 to condone the delay of 1982 days in filing an appeal. The said petition was allowed. Against the said order passed by the Court below, the revision petitioners herein/plaintiffs have preferred this Civil Revision Petition.

7. The learned counsel appearing for the defendant/Rajapalayam Municipality submitted that after judgment his standing counsel passed away. So, there is no proper guide to prefer an appeal. The delay was occurred neither willful nor wanton.

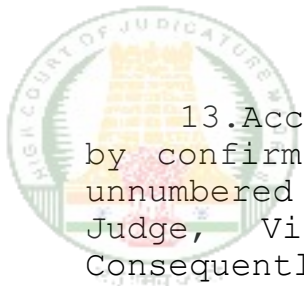
8. The learned counsel appearing for the revision petitioners submitted that there was another Standing counsel also available. The reasons stated for delay is not genuine. The plaintiffs have constructed a wall in the year 1981 in their property. The Rajapalayam Municipality wants to demolish the wall.

9. The defendant is Rajapalayam Municipality and they contested the case for the benefit of public only and Mr. Ayyalusamy, Standing counsel was an record. He died after the disposal of the suit. The fact is also admitted by the revision petitioners.

10. Further, the learned counsel appearing for the revision petitioners submitted that own witness of the defendant/Municipality deposed that, eventhough in records it is mentioned as a street it was not acquired by the Municipality. But an oral evidence against documentary evidence cannot be relied upon.

11. Further, all the issues raised in the suit can be decided after trial only. Since the defendant has taken plea only in favour of public, one opportunity to be given to the defendant.

12. Hence, the trial Court has rightly allowed the I.A.No.1 of 2020 in unnumbered appeal suit and this Court has no valid reason to interfere with the order passed by the Court below.



13. Accordingly, this Civil Revision Petition stands dismissed by confirming the order, dated 06.09.2021 in I.A.No.1 of 2020 in unnumbered appeal suit on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputhur. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

ksa

To

The Principal District Judge,
Virudhunagar District at Srivilliputhur.

+1 CC to M/s.N. DILIPKUMAR, Advocate (SR-19144[F] dated 18/04/2022)

+1 CC to M/s.V. JANAKIRAMULU, Advocate (SR-19439[F] dated 19/04/2022)

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