



WEB COPY

C.R.P.(MD) No.1953 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.01.2022**

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.1953 of 2017

and

C.M.P. (MD) No.9944 of 2017

Y.Johnkutty

... Petitioner

vs.

1.T.Robinson

2.Selvi John

3.K.Kanagaraj

4.P.Vinodh

5.M.David

6.K.Yesudhas

7.T.Varghese

8.P.Mosai

9.T.Selvaraj

... Respondents

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.3 of 2016 in OS.No.101 of 2012 dated 12.06.2017 on the file of the learned District Munsif cum Judicial Magistrate, Bhoothapandy.

For Petitioner	: Mr.H.Arumugam
For R1	: Mr.E.V.N.Siva
For R2 to R9	: Dispensed with

ORDER

Aggrieved by the order passed in I.A.No.3 of 2016 in O.S.No.101 of 2012 by the learned District Munsif cum Judicial Magistrate, Bhoothapandy, the 1st defendant/revision petitioner is before this Court.

2.The brief facts are as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



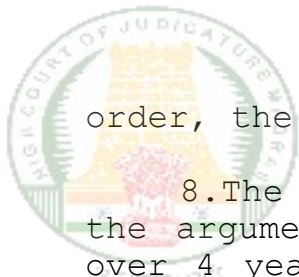
3.The 1st respondent herein had filed a suit for the relief of declaring the 'D' schedule property as the absolute property of the plaintiff and to recover to the plaintiff the possession of the encroached area from the defendants 1 and 2, injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule properties by the plaintiff, from encroaching into the same and making any further alteration and for mandatory injunction to remove the unlawful pathway made by the defendants on the northern side of the plaintiff's property, which has been demarcated in the rough plan and also closing this pathway by constructing a compound wall.

4.The revision petitioner, who is the 1st defendant in the suit, had filed a written statement denying the contentions made in the plaint. When the suit was pending trial, since the plaintiff did not appear before the Court on 21.02.2013, the suit was dismissed for default. The plaintiff had filed a petition to restore the suit to file on 23.04.2013. The same had been returned for certain compliances on 12.11.2014. The defects were cured and resubmitted. However, in the process the delay of 29 days was caused.

5.It is the case of the plaintiff that he was unable to contact his advocate, since he was suffering from rheumatism . In the affidavit filed in support of the condone delay petition, the plaintiff had submitted that in the suit, an Advocate Commissioner had been appointed, who has to file his report after measuring the properties. However, the Advocate Commissioner had not filed his report, since the defendants had demanded the Advocate Commissioner to revisit the spot, but no steps have been taken by the defendants. At this juncture, the suit has been dismissed for default. He would submit that great prejudice would be caused to him, if the suit is not restored to file.

6.A counter was filed by the defendants 1 to 7 and 9 denying the allegations contained in the affidavit filed in support of the application. The defendants would submit that the suit had been dismissed for default on 21.02.2013 and the plaintiff's contention that he had filed a restoration application on 23.04.2013, which was only returned on 12.11.2014, is not believable and the delay of 29 days for representation alone is not maintainable. The defendants would also submit that a perusal of the petition supplied by the plaintiff would indicate that the Court had received the petition only on 29.03.2016 and the delay calculated as 29 days was incorrect, since the actual delay is 4 years 1 month and 7 days.

7.The learned District Munsif cum Judicial Magistrate, Bhoothapandy however allowed the application taking into note the fact that though the application has been filed on 23.04.2013, the return has been given only on 12.11.2014 and therefore, the delay of 29 days as calculated by the plaintiff was correct. Challenging this



order, the revision petitioner/1st defendant is before this Court.

8.The learned counsel for the petitioner once again reiterated the argument that the delay in question was not 29 days, but was over 4 years and therefore, the impugned order deserves to be set aside.

9.The respondents' counsel would deny the above statements.

10.Heard the learned counsels on either side and perused the papers.

11.From the order of the trial Court, it is clear that though the petition had been presented on 23.04.2013, the return had been made by the trial Court only in the month of November, 2014. The plaintiff cannot be found fault for this delay on the part of the Court. Once it is clear that the return was only made on 12.11.2014, the delay now calculated is correct. Therefore, the learned Judge has rightly allowed the application and I do not find any reason to interfere with the same.

12.In the result, the Civil Revision Petition stands dismissed. The learned District Munsif cum Judicial Magistrate, Bhoothapandy, Kanyakumari District is directed to restore the suit O.S.No.101 of 2012 to file, after numbering the said application and after the said restoration, which will be done within a period of 10 days from the date of receipt of a copy of this order, the suit shall be disposed of on or before 30.06.2022. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To
The District Munsif cum Judicial Magistrate,
Bhoothapandy.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-466[F] dated 05/01/2022)

C.R.P. (MD) No.1953 of 2017

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