



C.R.P.No.625 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.625 of 2021

L.Xavier

...Petitioner/Petitioner/Plaintiff

-Vs-

- 1.Pattammal @ Arokyamary
- 2.Lilly Mary
- 3.Rose Mary
- 4.James
- 5.A.Sebastinraj
- 6.Irudhaya Raj
- 7.Nirmala
- 8.John Bosco
- 9.Rani @ Maria Thangam
- 10.Sebastin Raj
- 11.Joseph
- 12.Prakasam
- 13.Daisy
- 14.Vimala @ Santhanamary
- 15.Antony Samy
- 16.Gnana Mary
- 17.John Bosco
- 18.Chinna Pappa
- 19.Tanis Las
- 20.Thambu Raj
- 21.Dhandapani
- 22.Ramesh
- 23.Raja @ Rajendran



C.R.P.No.625 of 2021

24. Shanthi
25. K.N. Thiyagarajan
26. V.S. Mahalakshmi
27. Rajeswari
28. Joint Registrar,
No.3, Dr. Rajiv Gandhi Road,
East Peramanoor,
Salem.
29. Deputy Collector (Stamps),
Office of RDO Collector,
Salem -1.
30. Inspector General of Registration,
Santham High Road,
Foreshare,
Chennai.
31. Selvaraj ... Respondents/Respondents/Defendants

Prayer:- Petition filed under Section 115 of CPC, against the fair and decretal order passed in I.A.No.204 of 2015 in O.S.No.1139 of 2011 dated 14.10.2019 on the file of the Principal District Munsif Court, Salem.

For Petitioner : Mr.R.Jayaprakash

For R21 to R27 : Mr.S.Siva Kumar

For R1 to R20,
R28 & R30 : Dispensed with

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order passed in I.A.No.204 of 2015 in O.S.No.1139 of 2011 dated 14.10.2019 on the file of the Principal District Munsif Court, Salem.



WEB COPY

2. Brief facts which are relevant to decide this Civil Revision Petition are as follows:-

(a) The Plaintiff in the suit in O.S.No.1139 of 2011 is the Revision Petitioner herein. He had filed the suit, impleading 31 individuals as Defendants. The 28th Defendant is the Joint Registrar, Salem. The 29th Defendant is the Deputy Collector (Stamps). The 30th Defendant is the Inspector General of Registration, and all the other Defendants are individuals.

(b) The suit was filed to declare the decree of dismissal of the suit in O.S.No.831 of 2006 on the file of the learned Principal District Munsif, Salem, as null and void. Originally, the suit properties in O.S.No.831 of 2006 belonged to one Diraviyam Asari. The said Diraviyam Asari had executed a registered Will dated 31.07.1962, bequeathing the properties to his son, Appu Asari. The Plaintiff claims to be the adopted son of Thiru.Appu Asari. During his life time of Thiru.Appu Asari, he executed a registered Will in favour of the Revision Petitioner herein dated 11.02.2006, bequeathing all his suit properties to the Revision Petitioner herein. Even during the life time of Thiru.Appu Asari, he had appointed the Plaintiff as his



C.R.P.No.625 of 2021

WEB COPY

Power of Attorney Agent and registered a Power of Attorney Deed.

The said Appu Asari died on 23.04.2006. The Revision Petitioner herein only handed over the dead body of Thiru.Appu Asari to the Government Medical College Hospital, Salem. On the death of Thiru.Appu Asari, the Plaintiff in O.S.No.831 of 2006 had become the absolute owner of the suit properties. Except him, no other person has any right or possession over the suit properties. Defendants 1 to 20 claimed rights over the suit properties as the legal heirs of Thiru.Appu Asari. Defendants 1 to 20 in O.S.No.831 of 2006 have filed the suit for partition in O.S.No.131 of 2006 on the file of the learned Principal Sub Judge, Salem. The said Appu Asari was a bachelor. The Revision Petitioner herein had been assisting Thiru.Appu Asari in his day-to-day affairs. Thiru.Appu Asari had donated his body to the Medical College Hospital, Salem, by executing a document in which the Revision Petitioner herein was shown as the son of the deceased Appu Asari. Since Defendants 21 to 24 in the suit in O.S.No.1139 of 2011 kidnapped the Plaintiff, the Revision Petitioner herein obtained signatures in plain papers and prepared three sale deeds in favour of Defendants 22 to 24 by



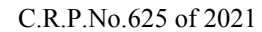
WEB COPY

misusing the signatures of the Revision Petitioner with the help of the 25th Defendant, the Plaintiff was forced to file the suit in O.S.No.1139 of 2011, seeking declaration with the decree of dismissal of the suit in O.S.No.831 of 2006 as null and void.

(c) The suit in O.S.No.1139 of 2011 was dismissed for default on 10.01.2014. The Revision Petitioner herein had filed Petition in I.A.No.204 of 2015 in O.S.No.1139 of 2011, to condone the delay of 74 days in filing the Petition to restore the suit. The Petitioner, due to his illness of jaundice, could not contact his Counsel and pay the necessary fees for taking summons to the Defendants. Hence, the suit was dismissed on the ground that batta was not paid for the issuance of summons to Defendants 1 to 5.

(d) To file the Petition to restore the suit in O.S.No.1139 of 2011 under Order IX, Rule 9 of CPC, there was a delay of 74 days. The delay was neither wilful nor wanton. It was caused only due to his illness, jaundice.

(e) A counter filed by the 22nd Defendant adopted by the 21st Defendant, and 25th Defendant adopted by Defendants 26 and 27, had vehemently objected to the same.



3.Learned Counsel for the Revision Petitioner invited the attention
s Court to the affidavit of the Petitioner, which reads as follows:

3. On 10.01.2014, when the matter was called there is no representation on my part and out of which the above suit was dismissed for default. I have got a good case in the above suit and I have got every chance of succeeding in the above suit. As such, the above suit has to be restored into file and further proceedings has to be ordered in the interest of justice and to meet the ends of justice. Otherwise, I will be put to heavy loss and hardship.



WEB COPY



C.R.P.No.625 of 2021

4.I have herewith filed Petition to restore the above suit. In filing of the above restoration Petition, there is a delay of 74 days. This delay is neither willfull nor wanton but only due to the above bonafide reason which happened beyond my control. As such, this delay has to be condone in the interest of justice. Otherwise, I will be put to heavy loss and hardship”.

4.In support of his contention, the learned Counsel for the Revision Petitioner relied on the following ruling:-

“In the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others* reported in (2013) 12 SCC 649.”

The aforesaid ruling relied on by the learned Counsel for the Revision Petitioner regarding sufficient cause is rejected on the ground that as per the order passed by the learned Principal District Munsif, Salem, the learned Principal District Munsif, Salem, had granted liberty to the Petitioner herein to file a fresh suit on the same cause of action after ascertaining the status of the Defendants, meaning that three Defendants had died. Also, the Petitioner herein as Plaintiff had to implead the legal representatives of the deceased Defendants. Therefore, the learned Principal District Munsif, Salem, had granted liberty. Therefore, the said ruling cited by the learned Counsel for the Revision Petitioner will not helpful to this case. Hence, rejected.



C.R.P.No.625 of 2021

WEB COPY

5.Learned Counsel for the Respondents vehemently objected to the submission of the learned Counsel for the Revision Petitioner, seeking to set aside the order of dismissal of the Petition and condone the delay of 74 days in filing the Petition to restore the suit. The learned Counsel for the Respondents submitted that even though the Petitioner herein had filed the suit in the year 2011, he had not taken summons to the Defendants on the date of first hearing of the suit. On 19.01.2012, the 1st Defendant reported dead. Therefore, the suit was posted for impleading the legal representatives of the deceased 1st Defendant and for fresh summons to Defendants 25 and 26. On 02.04.2012, Defendants 5 and 9 also were reported dead. Therefore, the learned Principal District Munsif, Salem, directed the Plaintiff to take steps to implead the legal representatives of the 1st Defendant, 5th Defendant and 9th Defendant and to issue fresh summonses to Defendants 25 & 26. After 19 hearings from 02.04.2012 till 10.01.2014, the Plaintiff had neither taken any steps to implead the legal representatives of the deceased Defendants nor paid batta for the issuance of summons to the Defendants. Therefore, the suit was rightly dismissed by the learned Principal District Munsif, Salem. I.A.No.204 of 2015 in O.S.No.1139 of 2011 was filed as though Defendants 1, 5 and 9 were still



WEB COPY

alive. However, even after coming to know that Defendants 1, 5 and 9 had died, the Petition was dismissed on 14.10.2019. While so, the Civil Revision Petition is filed only on 08.03.2021, as per the seal on the memorandum of Revision Petition. The only intention of the Petitioner herein is to cause harassment to the Respondents.

6.Learned Counsel for the Respondents invited the attention of this Court to the counter filed by the Respondents, which reads as follows:

“6.These Respondents further submit that Petitioner/Plaintiff was called absent and the suit was dismissed for default on 10.01.2014 itself for his non appearance and no representation. The Petitioner/Plaintiff has filed this Petition only on 23.09.2014. Hence it is evident that there is sufficient and reasonable time for the Petitioner to file application to restore the suit and there is no bar for him to advert into the proceedings legitimately. The Petitioner wantonly kept quiet in the matter for a long time and filed this Petition belatedly is clearly abuse of process of law. So the Petitioner has no manner of right or locus standi to file this Petition to condone delay of 220 days”.

7.The learned Counsel for the Respondents further submitted that Thiru.Appu Asari was a bachelor. He died as a bachelor. The Petitioner is a third party to the family of Thiru.Appu Asari. The Defendants in the suit in O.S.No.831 of 2006 are none other than the clause 2 legal heirs of



C.R.P.No.625 of 2021

Thiru.Appu Asari. The clause 2 legal heirs of Thiru.Appu Asari, Respondents 1 and 2, had filed the suit for partition in O.S.No.131 of 2006 before the learned Principal Sub Judge, Salem. A declaration suit was filed by the Petitioner herein in O.S.No.320 of 2006 before the learned Additional Sub Judge, Salem, and an injunction suit was filed by the Petitioner herein in O.S.No.831 of 2007 before the learned Principal District Munsif, Salem. In both suits, the parties arrived at an amicable settlement and filed a memo. The Revision Petitioner herein had filed memo in O.S.No.831 of 2007, stating that the matter had been settled out of Court. Based on which the suit in O.S.No.831 of 2006 was dismissed as settled out of Court on 13.08.2007. On 14.08.2007, the Petitioner had filed a memo in O.S.No.320 of 2006, stating that the matter was settled out of Court. Accordingly, the said suit was dismissed as settled out of Court. Subsequently, Respondents 1 to 20 filed a memo in O.S.No.131 of 2006, which was dismissed as settled out of Court. However, the suit in O.S.No.1139 of 2011 was filed belatedly beyond the period of limitation. Therefore, the suit itself is not maintainable. Only to harass Defendants 1 to 31, the Revision Petitioner herein as Plaintiff in O.S.No.1139 of 2011, had filed the suit. His only intention is to keep the suit pending. That is



why, after hearing both parties, the learned Principal District Munsif, Salem, dismissed the Petition in I.A.No.204 of 2015 in O.S.No.1139 of 2011 by observing in the concluding paragraph of the order, which reads as follows:-

“7.Point:-

The present application was filed to condone the delay of 74 days in filing the application to restore the suit which was dismissed for non prosecution. The reason stated by the Petitioner is that due to his ill-health process could not be paid and as such the suit was dismissed for default on 10.01.2014. Admittedly as per Ex.R1 the suit was originally taken on file on 13.12.2011 and the first hearing the suit was posted 19.01.2012. Even at the stage of service it was brought to the notice the 1st Defendant was died and fresh summon was ordered to the Defendants 25 and 26. On 02.04.2012 Defendants 5 and 9 are reported to be died and the case was adjourned from 19.04.2012 for steps for the Defendants 1, 5 and 9. The Petitioner was given opportunity for taking steps and for fresh summons to Defendants 25 and 26 from 19.04.2012 to 10.01.2014. In spite of the time granted the Petitioner has not taken any steps nor has chosen to pay batta for Defendants 25 and 25. As such on 10.01.2014 the suit was dismissed for default. In the present application the Petitioner has stated that because of his illness on 10.01.2014 the steps could not be taken. But the records indicates the Petitioner was given opportunity from 19.04.2012 and there was no explanation why steps were not taken till 10.01.2014. Even the present application was filed before this Court on 25.04.2014. In the present application the Petitioner has shown the Respondents 1, 5 and 9 were shown as alive, which shows the Petitioner knowing the death of the Respondents have filed the application mechanically for the obvious reasons best known to him. The Petitioner has stated the suit was posted for fresh summons to D1 to D5 which is also incorrect. The Petitioner has not offered any



C.R.P.No.625 of 2021

explanation for non taking steps and he was not even aware about the status of the parties. The suit having been filed as in the year 2011, till 2014 the Petitioner was not successful in effecting service upon the Defendants which shows the lethargic attitude of the Petitioner and the process of the Court cannot be used as a tool by the Petitioner to condone the delay. As such in the facts and circumstance of the case this Court is not inclined to allow the application. Strangely after filing the application in the year 2014 and when it was brought to the notice of the Petitioner by Ex.R1, the Petitioner has chosen to not press the claim against the Respondents 1, 5 and 9 in the year 2019 also shows the Petitioner was instrumental in delaying the proceedings. The Petitioner can bring a fresh suit after ascertaining the status of the parties and as such there cannot be any prejudiced to the Petitioner. Accordingly, the Petition filed by the Petitioner is devoid of merits.”

8.The learned Principal District Munsif, Salem, had granted the Petitioner the liberty to file a fresh suit on the same cause of action after ascertaining the status of the parties. Therefore, the Petitioner is in no way prejudiced by the dismissal of O.S.No.1139 of 2011 or dismissal of I.A.No.204 of 2015 in O.S.No.1139 of 2011 by order dated 14.10.2019. This Civil Revision Petition is filed only with the intention of harassing the Respondents. Therefore, the order of the learned Principal District Munsif, Salem, dated 14.10.2019, is assailed filing the Civil Revision Petition belatedly on 05.03.2021. On perusal of the records in the Civil Revision Petition, it is found that no Civil Miscellaneous Petition had been



C.R.P.No.625 of 2021

filed to condone the delay in filing the Civil Revision Petition. Therefore, this Civil Revision Petition has no merits and is to be dismissed.

9. Point for consideration:-

Whether the order passed by the learned Principal District Munsif, Salem, dismissing the I.A.No.204 of 2015 in O.S.No.1139 of 2011, Petition to condone the delay of 74 days in filing the Petition to restore the suit in O.S.No.1139 of 2011, by filing Petition under Order IX, Rule 9 of CPC is to be set aside?

10. On consideration of the rival submission, on perusal of the affidavit of the Petitioner, counter of the Respondents in I.A.No.204 of 2015 in O.S.No.1139 of 2011 and the order passed by the learned Principal District Munsif, Salem, in I.A.No.204 of 2015 in O.S.No.1139 of 2011 dated 14.10.2019, it is found that the submission of the learned Counsel for the Revision Petitioner has no merits as the learned Principal District Munsif, Salem, in dismissing the Petition to condone the delay of 74 days in filing the Petition under Order IX, Rule 9 of CPC, had observed that the Petitioner can file a fresh suit on the same cause of action after ascertaining the status of the parties, meaning, that a few of them are died and their legal heirs had to be impleaded in the place of the deceased



C.R.P.No.625 of 2021

WEB COPY

Defendants. Therefore, the learned Principal District Munsif, Salem, granted liberty to the Petitioner to file a fresh suit on the same cause of action. Therefore, the dismissal of the Petition to condone the delay of 74 days in filing the Petition under Order IX, Rule 9 of CPC, to restore the suit in O.S.No.1139 of 2011, no prejudice is caused to the Revision Petitioner herein as Plaintiff in O.S.No.1139 of 2011. Therefore, the submission of the learned Counsel for the Revision Petitioner is rejected.

11.In the light of the above discussion, the point for consideration is answered in favour of the Respondents and against the Revision Petitioner. The order passed by the learned Principal District Munsif, Salem, dismissing the I.A.No.204 of 2015 in O.S.No.1139 of 2011, Petition to condone the delay of 74 days in filing the Petition to restore the suit in O.S.No.1139 of 2011, by filing Petition under Order IX, Rule 9 of CPC, is not set aside as it is found well-reasoned order which does not warrant any interference by this Court. The same is to be confirmed.

12.In the result, the above **Civil Revision Petition stands dismissed** confirming the order passed by the learned Principal District Munsif,



C.R.P.No.625 of 2021

Salem, dismissing I.A.No.204 of 2015 in O.S.No.1139 of 2011 dated
14.10.2019. No costs.

14.06.2023

cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To

The Principal District Munsif Court, Salem.



WEB COPY



C.R.P.No.625 of 2021

SATHI KUMAR SUKUMARA KURUP, J.,

cda

C.R.P.No.625 of 2021

14.06.2023