



C.R.P.(NPD)No.1378 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.1378 of 2019

1.Pongali Konar (died)
2. Kannammal
3.Palanisamy
4.Thulasimani

.. Petitioners

Vs.

1. J.Saraswathi
2. Ponnammal
3.Chinna Kannu
4.Subramaniam
5.Velusamy

.. Respondents

(1st petitioner viz., Pongali Konar died and his legal heirs were impleaded as the petitioners 2 to 4 and the respondents 2 to 5 vide order of this Court dated 29.08.2023 in C.M.P.Nos.6450, 6456 & 6458 of 2023 in C.R.P.No.1378 of 2019)

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 09.01.2019 in I.A.No.1109 of 2018 in O.S.No.2493 of 2008 on the file of the II Additional District Munsif Court, Coimbatore.



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For Petitioners : Mr.Sriram
for Mr.M.N.Balakrishnan

For 1st respondent : Mr.M.Roshan Atiq

ORDER

The revision arises against an order dated 09.01.2019 in I.A.No.1109 of 2018 in O.S.No.2493 of 2008 on the file of the II Additional District Munsif Court, Coimbatore.

2. The 1st petitioner is the plaintiff and the 1st respondent is the defendant. O.S.No.2493 of 2008 is a suit for declaration of title and for injunction. The plaintiff even at that time, was aged about 81 years. A written statement was filed by the defendant disputing the claim to the suit property. The trial opened on 12.09.2015 and went on till 05.09.2017. As the plaintiff did not present himself for further cross-examination, the suit was dismissed for default on 12.09.2017. In order to restore the same, an application in I.A.No.1109 of 2018 was filed together with a petition to condone the delay of 378 days in filing



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the restoration petition. The said application was hotly contested by the 1st respondent before the trial Court as well as before me on the ground that the entire idea of the plaintiff is only to drag on the matter and that he is not interested in the logical conclusion of the suit. The learned trial Judge was impressed with the arguments of the 1st respondent and dismissed the application on 09.01.2019. Challenging the same, the present revision has been preferred.

3. Heard Mr.Sriram, learned counsel representing Mr.M.N.Balakrishnan, for the petitioners and Mr.M.Roshan Atiq, learned counsel for the respondents. I have carefully gone through the records.

4. Mr.Sriram, would submit that the 1st petitioner/plaintiff was 90 years old even on the date of filing of the application and he was unable to be present before the Court due to sickness, as he underwent an eye operation. He would further state that on account of the operation, the plaintiff was not able to contact his lawyer and therefore, the matter



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stood adjourned to four months and finally, ended for dismissal of default.

5. Mr.M.Roshan Atiq, would oppose the revision on the ground that effectively, for a calender period of two years, the matter had been only adjourned and the plaintiff presented himself in a piecemeal manner before the trial Court for the purpose of cross-examination. He would state that there is absolutely no merits in the application and the revision should be dismissed.

6. The fact remains that the 1st petitioner was a Senior Citizen, aged 90 years, who had undergone operation. The Court could have taken a liberal view considering the age and ailment of the 1st petitioner and could have condoned the delay.

7. I am of the view, perhaps, had the delay been condoned, the suit itself would have been disposed of by now. Considering the fact that the



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valuable rights to the immovable properties are involved and also an “eye operation” is a sufficient cause for non appearance, I am inclined to condone the delay. However, I have to balance the interest of the petitioners as well as the respondents. The respondents have been facing litigation for more than 10 years on account of one reason or the other. The property is under litigation and therefore, it has its consequences. Interest of justice will be served, if heavy cost is imposed with further condition to dispose of the suit at an early date. Therefore, I pass the following order:

(i) The delay of 378 days in filing an application to restore the suit is condoned on condition that the **petitioners pay to the respondents Rs.25,000/- (Rupees Twenty Five thousand only)** on or before 22.09.2023.

(ii) On payment of the cost and production of proof thereof, the learned II Additional District Munsif, Coimbatore, is requested to take up the application filed under Order IX Rule 9 of CPC and allow the same.

(iii) The learned trial Judge shall thereafter, make all endeavours to



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complete the suit in O.S.No.2493 of 2008 on or before 15.04.2024.

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(iv) As the legal representatives of the deceased plaintiff have already been brought on record in this revision, it will enure in favour of the suit also.

(v) The learned trial Judge is requested to permit the plaintiffs to amend the plaint regarding the legal heirs and also file the amended plaint copy by bringing to its notice the amendment ordered by this Court by filing a memo.

(vi) It is made clear that if the cost is not paid, the Civil Revision Petition automatically stands dismissed without further reference to this Court.

8. The Civil Revision Petition stands allowed on the above terms.

No costs.

29.08.2023

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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V.LAKSHMINARAYANAN,J.

Kj

To

II Additional District Munsif, Coimbatore.

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