



C.R.P.No.2743 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM:

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P(PD).No.2743 of 2018 and

C.M.P.No.16127 of 2018

V.Thiyagarajan

...Petitioner

Versus

1.R.Balu

2.R.Rajenddran

3.R.Manivannan

4.R.Mayilvel

... Respondents.

PRAYER: Civil Revision Petition filed under filed under Article 227 of Constitution of India, to set aside the fair and decreetal order of the learned I Additional District Munsif, Salem dated 30.01.2018 in I.A.No.94 of 2017 in O.S.No.88 of 2012.

For Petitioner : Mr.K.Sivasubramanian

For Respondents 1 & 3 :Refused

For respondents 2 & 4 : Notice returned

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order of the learned I Additional District Munsif, Salem dated 30.01.2018 in I.A.No.94 of 2017 in O.S.No.88 of 2012.



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WEB COPY 2. This revision arises against the order dismissing the petition filed under Section 5 of the Limitation Act. The suit had been filed for declaration for a right to use a common well and consequential permanent injunction. The suit was based on an agreement of partition entered into between the vendors of the plaintiff and the defendants on 27.03.1982. The case of the plaintiff is that after obtaining interim injunction when he was enjoying the benefit of water supply, he suffered from serious affliction of jaundice and was unable to come to the Court. Therefore, the suit was dismissed for default. However, he did not move an application for restoration of the suit immediately but did so after a delay of nearly 1052 days.

3. The learned Trial Judge did not find sufficient cause to condone the delay and therefore, dismissed the same. Against the said order, he has preferred the present revision.

4. I have gone through the reasons given by the petitioner. It is unbelievable that the petitioner was suffering from jaundice for three years. Further, no evidence of worth has been produced before the Court.



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5. Hence, I am constrained to confirm the order of the trial Court in

I.A.No.94 of 2017 in O.S.No.88 of 2012 dated 30.01.2018.

6. At this juncture, Mr.K.Sivasubramanian, learned counsel for the petitioner would submit that the enjoyment of water commences day to day and hence, even today he has a cause of action to present a suit.

7. This Court is of the view that the enjoyment of water from a common well arises everyday. Each obstruction gives a fresh cause of action. Therefore, if the plaintiff wants to present a fresh suit, it is always open to him to present a fresh claim. I am only dealing with the revision against the condonation of delay. I am not satisfied with the reasons stated by the learned counsel for the petitioner. Therefore, the civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed.

06.07.2023

Index: Yes/ No
Speaking Order / Non-Speaking Order
nr



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V.LAKSHMINARAYANAN, J.

nr

To

The learned 1st Additional Sub-ordinate Judge,
Coimbatore,

C.R.P(PD).No.2743 of 2018

and

C.M.P.No.16127 of 2018

06.07.2023