



CRP.No. 2209 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

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K. Murugamal

.. Petitioner

Versus

1. Narayanan
2. N. Pachaiyammal
3. N. Mookkan

.. Respondents

Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to set aside the fair and decretal order dated 06.03.2020 passed in I.A.No. 777 of 2018 in O.S.No. 139 of 2011 on the file of District Munsif Court, Harur, Dharmapuri District.

For Petitioner : Mr.C Prabakaran

For Respondents : Mr.V. Micholas



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ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 06.03.2020 passed in I.A.No. 777 of 2018 in O.S.No.139 of 2011 on the file of District Munsif Court, Harur, Dharmapuri District.

2. The revision petitioner is the plaintiff and the respondents are the defendants in the suit.

3. The revision petitioner has filed the suit in O.S.No. 139 of 2011 before the District Munsif Court, Harur, against the defendants for declaration and permanent injunction. During the pendency of the suit proceedings, the revision petitioner has filed I.A.No. 777 of 2018 to condone the delay of 1802 days in filing an application under Order 9 Rule 9 of CPC., to restore the above suit. After perusing the records, the said application was dismissed by the impugned order dated 06.03.2020. Challenging the same, the revision petitioner/plaintiff has filed the



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present Civil Revision Petition.

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4. The learned counsel for the petitioner argued that the revision petitioner suffered Jaundice and hence, she could not appear before the Court and the suit was posted for trial and after she completely recovered from Jaundice, and when she met her Advocate, she has been informed that the suit was dismissed for default by order dated 13.11.2013. The learned counsel further argued that he had failed to appreciate evidence when the suit was filed for declaration of title and permanent injunction and the matter involves immovable properties and the trial Court has to come to the conclusion in the application and lenient view was taken by the Court below to advance fair justice to the parties, but without ascertaining any valid reason, the trial Court dismissed the application earlier filed under Section 5 of the Limitation Act, and hence, the present revision has been filed.

5. The learned counsel for the respondents/defendants argued that no sufficient reason is stated in the application filed to condone the delay of 1802 days and the petitioner filed one suit or other with an intention to



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harass the respondents/defendants and for the very same property, the petitioner's husband and another, have filed the suit in O.S.No.379 of 2002 before the District Munsif Court, Harur and after contesting, it was dismissed on 17.03.2005 and subsequently, appeal has also been preferred in A.S.No. 37 of 2005 on the file of Sub Court, Dharmapuri District, and the same was also dismissed on 28.01.2008 and thereafter, with *mala-fide* intention, the petitioner has filed the present suit only to harass the respondents/defendants.

6. Heard both sides and perused the records.

7. On a perusal of the records, it is seen that, originally, the petitioner's husband and another have filed the suit in O.S.No.379 of 2002 for the very same property, claiming the relief of declaration of title and permanent injunction and the suit was dismissed on 17.03.2005 after contest and subsequently, appeal has also been filed in A.S.No. 37 of 2005 and the same was dismissed by the Sub Court, Dharmapuri District, on 28.01.2008. Admittedly, there was further appeal by the parties in O.S.No. 139 of 2011.



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8. The learned counsel for the respondents/defendants argued that it is the habit of the petitioner and the family members to file one suit or the other with an intention to harass the defendants and mental agony was also caused to the respondents/defendants.

9. At this stage, it is not necessary to appreciate the facts and the decision in O.S.No.379 of 2002 and also in A.S.No. 37 of 2005. While so, the trial Court is justified in dismissing the application in I.A.No.777 of 2018 which has been filed under Section 5 of the Limitation Act, to condone the delay of 1802 days in filing the application under Order 9 Rule 9 of CPC.,

10. Before the trial Court, the revision petitioner has been examined as PW1 and one Muthu, was examined as PW2. No documentary evidence was adduced on the side of the revision petitioner/plaintiff. The first respondent/D1 examined himself as RW1 and Ex.R1 to Ex.R4 were marked on the side of the defendants.



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11. The trial Court has carefully scrutinized the entire evidence of the revision petitioner and had rightly come to the conclusion that the delay was not properly explained by the revision petitioner/plaintiff and hence, the application was dismissed on 06.03.2020. The suit in O.S.No.139 of 2011 was posted for examination of the plaintiff's side evidence on 07.11.2013. On which date, the revision petitioner got adjournment on the ground that he would file an application under Order 17 Rule 1 of CPC and the matter was adjourned to 13.11.2013 for further hearing. On 13.11.2013, the revision petitioner has not appeared before the trial Court and no additional documents were produced by the learned counsel for the revision petitioner/plaintiff and hence, the trial Court dismissed the suit for default on 13.11.2013.

12. Furthermore, the trial Court pointed out that in the affidavit filed I.A.No.1090 of 2013, the revision petitioner/plaintiff sought only time to produce additional documents and no where it is stated that the revision petitioner suffered with Jaundice and she was unable to appear before the trial Court to depose evidence. Therefore, the trial Court has correctly come to the conclusion.



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13. The reason stated in the application that due to Jaundice, the revision petitioner was unable to appear before the trial Court, is not genuine.

14. Further, it is also pointed out that, it is highly unbelievable that the revision petitioner has approached his Counsel after three years and she came to know about the dismissal of the suit only later. From the affidavit by the revision petitioner in I.A.No.777 of 2018 before the Court below, it reveals that she had undergone native treatment, and she also underwent treatment for the same it is highly unpardonable that she was under the treatment for a period of three years continuously.

15. Therefore, the trial Court has rightly concluded that the reasons stated for the delay are not genuine and it is not satisfactory to the Court.

16. On a perusal of the evidence and documents, this Court decided that there is no need for interference with the order of the trial Court and hence, the Civil Revision Petition is not maintainable and the



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same is liable to be dismissed.

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17. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

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Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
MSM

To

1. The District Munsif, Harur, Dharmapuri District.
2. The Section Officer, V.R.Section, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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