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C.R.P. No.3404 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM: JUSTICE N.SESHASAYEE

C.R.P. No.3404 of 2019
and C.M.P.No.22405 of 2019

1.Madhan @ Madhanagopal
2.Velusamy

... Petitioners / Petitioners / Defendants

Vs.

1.Marimuthu
2.Periyasamy

...Respondents / Respondents /
Plaintiffs

PRAYER: Civil Revision Petition filed under Section 115 of CPC praying to set aside the fair and decretal order of the Additional District Munsif Court at Perambalur dated 02.07.2019 in I.A.No.1674 of 2018 in O.S.No.194 of 2015.

For Petitioner : Mr.P.Valliappan

For Respondents : N.Suresh for R1
R2 - No Appearance

ORDER

The present revision is preferred by the defendants challenging the order passed in I.A.No.1674/2018, dismissing the application for condonation of delay of 763 days filed by them, in setting aside the exparte decree passed in a suit for bare injunction in O.S.No.194 of 2015.



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2. In the affidavit filed in support of this application, the revision petitioners have averred that the first petitioner was down with jaundice, and that the second petitioner was taking care of the first petitioner, that they could not attend the court on that relevant date.

3. The trial Court had rejected this statement because in a suit in O.S.No.261/2014, which the second revision petitioner has filed vis-a-vis some other property against the Government, he had been tendering evidence before the Court in O.S.No.261/2014. On other words, according to the trial Court, this revision petitioners had made a false statement in their affidavit.

4. Heard both sides. Since the suit is laid only for bare injunction, nothing in law precludes the revision petitioner / the plaintiff from instituting a suit for declaration of his title if he is so desirous. Indeed, there were writ proceedings instituted against the second revision petitioner by the respondents/plaintiffs herein vide W.P.Nos.25776 of 2015 and W.P.No. 25777 of 2015, wherein this Court in its order dated 19.11.2019 has directed the revision petitioners to approach the civil court for appropriate remedies. After all, in a suit for bare injunction, the principal question for consideration



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of the Court is that the legitimacy of the possession of the plaintiffs or if the possession is settled and not the title *per se*. More so, in a case where an exparte decree of prohibitory injunction was passed, the Court would not have an opportunity to go into the question of title, as no issue of title is required to be framed.

5. The revision petition is therefore dismissed for the reasons stated above.

No costs. Consequently, connected miscellaneous petition is closed.

27.03.2023

Index : Yes / No

Speaking order / Non-speaking orders

To:

1.The Additional District Munsif Court
Perambalur

2.The Section Officer
VR Section, High Court, Chennai.



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N.SESHASAYEE, J.,

ds

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