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C.R.P(NPD)No.4065 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (NPD) No.4065 of 2019
and C.M.P.No.26654 of 2019

T.Shantha

...

Petitioner

Vs.

1.Kulandayee

2.Marimuthu

3.Pachiammal

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 04.10.2019 made in I.A.No.145 of 2015 in I.A.No.88 of 2012 in C.F.R.No.4357 of 2012 on the file of the Sub-Court, Bhavani.

For Petitioner : D.Sathya

For Respondents : M/s.M.Adhishree
for M/s.N.Manokaran

ORDER

This Civil Revision Petition has been filed challenging the fair and final order in I.A.No.145 of 2015 in I.A.No.88 of 2012 in C.R.F.No.4357 of 2012



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on the file of the Sub Court, Bhavani.

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2. The petitioner viz., Kulandayee has originally filed the partition suit in O.S.No.36 of 2009 on the file of District Munsif Court, Bhavani to divide the suit property between the plaintiff and the defendants 1 & 2 and allot one such equal share to the plaintiff and to declare the sale agreement dated 08.07.2002 entered between the defendants 1 & 3 as null and void and granting permanent injunction restraining the third defendant from interfering the plaintiff peaceful joint possession and enjoyment of the suit property.

2.1. Thereafter, the aforesaid suit was decreed by the District Munsif Court, Bhavani on 02.08.2010 and restrained the third defendant from interfering the plaintiff peaceful joint possession and enjoyment of the suit property. Aggrieved by the above judgment and decree dated 02.08.2010, the third defendant has filed an unnumbered appeal suit - C.F.R.No.4352 of 2012 along with the petition I.A.No.88 of 2012 to condone the delay of 603 days in preferring the appeal suit.

2.2. The I.A.No.88 of 2012 was posted for enquiry on 25.11.2014, since the revision petitioner/appellant did not appear, the petition was



dismissed by the Sub-Court, Bhavani on 25.11.2014. Thereafter, the revision petitioner/appellant filed another petition I.A.No.145 of 2014 on 29.06.2015 in I.A.No.88 of 2012 in C.F.R.No.4357 of 2012 to condone the delay of 164 days in filing the petition to restore the I.A.No.88 of 2012 which was dismissed by the Sub-Court, Bhavani (Appellate Court) on 25.11.2014. In that petition Ex.P.2 medical certificates were enclosed.

2.3. On perusal of the aforesaid certificates, the Sub-Court, Bhavani by order dated 04.10.2019 dismissed the I.A.No.145 of 2015 to condone the delay of 164 days in filing the restoration petition to restore I.A.No.88 of 2012. Aggrieved by the order passed by the Sub-Court, Bhavani (Appellate Court), dated 04.10.2019, the petitioner/appellant has come forward with the present Civil Revision Petition.

4. Learned counsel for the petitioner would submit that I.A.No.88 of 2012 was posted for enquiry on 25.11.2014, the revision Petitioner/appellant did not appear before the Appellate Court due to nerve pain fever and after recovering from the same, the petitioner/appellant met her counsel and come to know that the petition was dismissed for default on 25.11.2014. Due to



aforesaid ailment, the petitioner/appellant cannot file the restoration petition and after a delay of 164 days, the petitioner/appellant has filed I.A.No.145 of 2015 under Section 5 of Limitation Act, 1963 and the same was dismissed for non-availability of valid documents. Hence, he prayed that this Hon'ble Court may grant one more opportunity to the revision petitioner/appellant and allow the Civil Revision Petition.

5. Per contra, learned counsel appearing for the respondents submitted that the delay in filing the restoration application I.A.No.145 of 2015 is not acceptable and valid one. He further submitted that the respondents have already filed Executive Petition in O.S.No.36 of 2009 for delivery of possession against the revision petitioner/appellant and the same was numbered as E.P.No.45 of 2014 and the delivery of possession was also ordered by the Court. At this juncture, this application I.A.No.145 of 2015, which was filed by the revision petitioner/appellant/third defendant is only to prolong the proceedings.

6. Learned counsel appearing for the respondents further submitted that the final decree was passed in O.S.No.36 of 2009 on 11.12.2013 and the



revision petitioner/third defendant have also marked their presence in the E.P.No.45 of 2014 which was filed for delivery of possession and the same was also ordered by the Court on 08.12.2015.

7. Heard the learned counsel on either side and perused the materials available on record.

8. The only reason given in the condone delay application I.A.No.144 of 2015 to condone the delay of 164 days to restore I.A.No.88 of 2012, which was dismissed on 25.11.2014 by the Sub-Court, Bhavani (Appellate Court) is that the revision petitioner was suffering from viral fever and she could not appear before the appellate court. In this regard, she has filed the medical certificate dated 05.07.2015, which has been marked as Ex.P.2 and issued by one Dr.P.Thulasiraman (Siddha Doctor), who was also examined as P.W.2. **On perusal of the above said documents, it is found that there is no prescription of the medicines to be given for treating the revision petitioner and it is also pertinent to note that in the medical certificate, it is not mentioned as viral fever and it is mentioned that the revision petitioner/appellant has suffered from Nerve Pain Fever and body weakness for the last three years and she was treated for the same from**



20.11.2014 to 28.06.2015 but, in the affidavit filed in support of

I.A.No.145 of 2015, revision petitioner/appellant has stated that she was suffered from viral fever, which is contrary to the certificate issued by the Siddha Doctor dated 05.07.2015.

9. Usually, in the prescription, the medical registration number of the doctor will be mentioned and in this case, **there is no medical prescription prescribing the medicines to be taken by the petitioner for her ailment and even in the medical certificate dated 05.07.2015, there is no clinic number and the Doctor's registration number. In the appellate Court, the said Doctor deposed that he has not mentioned his registration number in Ex.P.1 and also stated that the medicines prescribed by him is only pertaining to increase the digestive system of the petitioner, which is contrary to his own medical certificate dated 05.07.2015, wherein it has stated that the petitioner was suffering from Nerve Pain Fever and body weakness and there is no prescription filed given by the doctor in this regard. The doctor also further admitted that the petitioner came to his clinic for only one day that is the day mentioned in Ex.P.1.**

10. The appellate Court have taken into consideration all these factual



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aspects and rightly dismissed the I.A.No.145 of 2015 filed to condone the delay of 164 days in filing the restoration petition to restore the I.A.No.88 of 2012 which was dismissed by the Sub-Court, Bhavani (Appellate Court) on 25.11.2014.

11. In view of the above factual matrix of the case, this Court is not inclined to set aside the fair and final order passed in I.A.No.145 of 2015 in I.A.No.88 of 2012 in C.F.R.No.4358 of 2012 dated 04.10.2019 passed by the Sub-Court, Bhavani (Appellate Court) and the same is hereby confirmed.

12. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No



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