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C.R.P.No.1006 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1006 of 2019
and C.M.P.No.6671 of 2019

Mounthulu Naidu

.. Petitioner

Vs.

Delhi Bai alias Gowrammal

.. Respondent

Prayer:- Civil Revision Petition filed under Article 115 of CPC to allow the above CRP setting aside the Fair and Decreetal Order of the learned Principal District Munsif, Ambur dated 21.08.2012 in I.A.No.304 of 2011 in O.S.No.26 of 2004 and to order the said IA as prayed for.

For Petitioner : Mr.T.M.Hariharan

For Respondent : Mr.A.Vimalraj
for Mr.L.K.Manjunath

ORDER

This Civil Revision Petition has been filed as against the fair and Decreetal Order dated 21.08.2012 made in I.A.No.304 of 2011 in O.S.No.26 of 2004 on the file of the learned Principal District Munsif, Ambur, thereby dismissing the petition to condone the delay of 2290



C.R.P.No.1006 of 2019

days in filing the petition to set aside the exparte decree.

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2. The respondent herein filed a suit in O.S.No.26 of 2004 for permanent injunction in respect of the suit property. On receipt of the summons, the petitioner failed to appear before the Trial Court and as such he was set exparte and an exparte decree was passed. Therefore, the petitioner filed an application to set aside the exparte decree with the delay of 2290 days.

3. A perusal of the affidavit filed in support of the condone delay petition revealed that he was not served with any summons from the Trial Court. The petitioner filed a suit for declaration in O.S.No.272 of 2009 as against the respondent and it is pending on the file of the District Munsif Court, Vellore. When the petitioner was attempting to cultivate the land, the respondent opposed the petitioner to enter into the land. Therefore, he came to the know about the exparte decree. Therefore, there was a delay of 2290 days and the said delay is neither willful nor wanton.



C.R.P.No.1006 of 2019

WEB COPY

4. A perusal of Court records revealed that the suit summon was duly issued to the petitioner and the same was returned as refused. Therefore, the petitioner was set exparte and an exparte decree was passed. Therefore, the reasons stated in the affidavit filed in support of the condone delay petition are not sufficient and as such the Court below rightly dismissed the petition to condone the delay of 2290 days.

5. That apart, it is a suit for injunction and now the respondent died. Further, the petitioner also filed a suit for declaration as against the respondent in O.S.No.272 of 2009 before the District Munsif Court, Vellore, which is pending.

6. Therefore, if the condone delay petition is allowed, no purpose would be served and as such this Court finds no infirmity or illegality in the order passed by the Court below and this revision is liable to be dismissed.



C.R.P.No.1006 of 2019

7. Accordingly, this Civil Revision Petition is dismissed.

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Consequently, connected Miscellaneous petition is closed. No costs.

09.02.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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C.R.P.No.1006 of 2019

G.K.ILANTHIRAIYAN,J.

mn

To

1. The Principal District Munsif, Ambur.
2. The District Munsif Court, Vellore.

C.R.P.No.1006 of 2019
and C.M.P.No.6671 of 2019

09.02.2023