



CRP (MD) No.1572 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	25.07.2023
Pronounced on	15.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1572 of 2023

and

CMP(MD)No.7698 of 2023

1.Ponsingh

2.Kavitha

... Petitioners

Vs.

1.Koyilammal

2.Ebenezer

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order in I.A.No.1 of 2022 in A.S.No.13 of 2016 dated 08.03.2023 on the file of the Sub Court, Ambasamudram.

For Petitioners : Mr.T.S.R.Venkatramana
Senior Counsel
for M/s.V.Janaki Devi

For R1 : Mr.P.P.Alwin Balan



CRP (MD) No.1572 of 2023

ORDER

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This civil revision petition is filed as against the order dated 08.03.2023 made in I.A.No.1 of 2022 in A.S.No.13 of 2016 on the file of the Sub Court, Ambasamudram.

Facts:-

2. Originally, the grandfather of the petitioners filed a suit in O.S.No. 303 of 1985 on the file of the District Munsif Court, Ambasamudram against the petitioners' mother in respect of the suit properties, which came upto the second appeal in S.A.No.285 of 1993 on the file of this Court. Thereafter, the petitioners filed a suit in O.S.No.402 of 2004 for partition and the same was decreed in their favour. The grandfather of the petitioners filed the appeal in A.S.No.11 of 2007, which was remanded back to the trial Court for considering certain documents produced by the grandfather of the petitioners. Thereafter, the petitioners' grandfather died and the respondents 1 and 2 were added as legal heirs in that case and the same was decreed again by the trial Court on 26.02.2016. Against the said order, the first appeal in A.S.No.13 of 2016 was filed by the first respondent. The first respondent, who is in



CRP (MD) No.1572 of 2023

possession of 1 acre 50 cents of land, with intention to prolong the case, remained absent in the appeal suit and therefore, the appeal was dismissed for default on 06.07.2019. Thereafter, they filed an application under Order 9 Rule 13 of CPC, with the delay of 757 days. However, the Court below, in order to give an opportunity to the first respondent, allowed the petition with costs. Aggrieved by this, the petitioners preferred the present revision against the order passed in I.A.No.01 of 2022 in A.S.No.13 of 2016 on the file of the Sub Court, Ambasamudram.

3. The learned counsel appearing for the petitioners would submit that Section 5 of the Limitation Act is an enabling provision to help the litigants, who could not attend the Court hearings for valid and sufficient reasons. In the present case, the first respondent has deliberately remained absent and the explanation for his absence, is nothing, but untrue. He would further submit that B-dairy extract would prove that the first respondent has deliberately remained absent and left the appeal suit to be dismissed for default. He would further submit that the reason given by the first respondent that she was suffering from thyroid and by filing Ex.P1 to Ex.P3 alone the ailment



stated by the first petitioner, cannot be accepted. In fact, without examining the medical practitioner, who had treated the first respondent, the medical records marked as Ex.P1 to Ex.P3 cannot be accepted. The attempt of the first respondent is only to prolong the case and deny the lawful shares of the petitioners. Hence, the order passed by the Court below in the petition filed under Order 9 Rule 13 of CPC with a delay of 757 days, is liable to be set aside.

4. The learned counsel for the petitioners would further submit that since no cogent and acceptable explanation was given by the first respondent, the Court below ought to have dismissed the petition filed by the first respondent. The Court below is not justified in allowing the application filed by the first respondent. To support his contention, he has relied upon the decision cases reported in ***AIR 2012 SC 1506 and 2011 (4) SCC 363***.

5. On the other hand, the learned counsel appearing for the first respondent would submit that in the absence of anything showing *mala fide* or deliberate delay as a dilatory tactics, the Court should normally condone



the delay. Further, where a Court condones the delay in positive exercise of discretion, Superior Court, more particularly, the Revisional Court should not normally disturb the same. He would further submit that due to pandemic situation, the first respondent was unable to attend the Court and the Hon'ble Supreme Court in the decision reported in 2022 (5) SCC 112, granted extension of limitation period for all proceedings before the Court and Tribunals. Hence, the Court below has rightly allowed the petition, which calls for no interference.

6. Heard on both side and records perused.

7. It is repeatedly held in catena of decisions by this Court and the Hon'ble Apex Court that the words 'sufficient cause' under Section 5 of Limitation Act, should receive a liberal construction so as to advance substantial justice. As rightly pointed by the learned counsel appearing for the first respondent, once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the Superior Court should not disturb such finding, muchless, in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or



CRP (MD) No.1572 of 2023

perverse. However, while condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he would have incurred quite large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant, the Court shall compensate the opposite party for his loss.

8. In view of the above observations, this Civil Revision Petition is dismissed and the impugned order passed by the learned Subordinate Judge, Ambasamudram, in I.A.No.1 of 2022 in A.S.No.13 of 2016, dated 08.03.2023, is confirmed. However, the cost imposed on the first respondent before the Court below is enhanced from Rs.5,000/- to Rs.10,000/- and the same shall be paid to the petitioners within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

15.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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CRP (MD) No.1572 of 2023

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To
The Sub Judge,
Ambasamudram.



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CRP (MD) No.1572 of 2023

K.GOVINDARAJAN THILAKAVADI

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order made in
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