



WEB COPY



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.07.2023
Delivered on : 08.09.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.570 of 2023
and
C.M.P(MD)No.2680 of 2023

1.Mr.Udayasuriyan
2.Mr.Mokkaimayan
3.Mrs.Nagalakshmi

... Petitioners/Appellants/1 to 3
Defendants

Vs.

1.Mrs.Ramuthai

...1st Respondent/1st Respondent
/Plaintiff

2.Mr.Soda Pandi

...2nd Respondent/2nd
Respondent/4th Defendant

*(memo presented before the Court
on 13.02.2023 is recorded as R2
given up vide Court order dated
13.02.2023 made in C.M.P(md)No.
9158 of 2022)*

Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order dated 24.08.2021 in I.A.No.2 of 2019 in unnumbered A.S.No.... of 2019 on the file of the Sub-Court, Theni, in O.S.No.201 of 2011 made on the file of the District Munsif Court, Theni.

For Petitioners
For R1
For R2

:Mr.B.Rajesh Saravanan
:Mr.K.K.Kannan
:Given up

**ORDER**

This civil revision petition is filed against the fair and decreetal order, dated 24.08.2021 passed in I.A.No.2 of 2019 in unnumbered A.S.No.... of 2019 by the Subordinate Judge, Theni, in O.S.No.201 of 2011 made on the file of the District Munsif Court, Theni.

2. According to the revision petitioners/defendants, the first respondent/plaintiff filed a suit in O.S.No.201 of 2011 for declaration of title and for mandatory injunction directing the defendants to hand over the vacant possession to the first respondent/plaintiff. The suit was decreed on 12.02.2015 and the defendants were set ex-parte. Against which, the petitioners/defendants preferred an appeal before the Sub-Court, Theni and there was a delay of 1536 days in filing the appeal. Therefore, the petitioners/defendants filed an application in I.A.No.2 of 2019 for condoning the above delay in filing the appeal suit. In spite of reasonable cause shown in the above condone delay application, the first appellate Court dismissed the said application, without considering the fact that an ex-parte decree was passed in O.S.No.201 of 2011 in favour of the first respondent. Pursuant to which, the first respondent/plaintiff filed an execution petition and the same is pending before the Execution Court. Aggrieved over the order passed by the first appellate Court in I.A.No.2 of 2019, the present civil revision petition is filed.



3.The learned counsel appearing for the petitioners would submit that the first respondent/plaintiff has already filed an execution petition for recovery of possession and if the condone delay petition is not allowed, the revision petitioners will be put into irreparable loss and hardship and on the other hand, by allowing this application, no prejudice would be caused to the first respondent/plaintiff. Therefore, the order passed by the first appellate Court is liable to be set aside.

4.On the other hand, the learned counsel appearing for the first respondent/plaintiff would submit that though the decree was passed in the above suit on 12.02.2015, the petitioners herein failed to prefer any appeal immediately. The first respondent/plaintiff filed execution petition in E.P.No.35 of 2015 for execution of the decree, in which, the petitioners entered appearance and failed to file their counter affidavit and therefore, ex-parte order was passed in the execution petition and delivery was ordered. On coming to know about the order of delivery, the second respondent at the instigation of the first respondent filed another application for setting aside the ex-parte order passed in the execution petition and the same was dismissed by the Execution Court. Thereafter, the revision petitioner preferred C.R.P(MD)Nos.278 and 279 of 2019 against the said dismissal order, which was also dismissed by this Court. Thereafter, the petitioners preferred the present application in I.A.No.2 of 2019 to condone



the delay of 1536 days in filing the appeal suit. The first appellate Court, considering all the facts on record, has rightly dismissed the application filed by the revision petitioners. Therefore, there is no infirmity in the order passed by the first Appellate Court and calls for no interference.

5. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent and perused the materials available on record.

6. The contention of the revision petitioners is that, they are in possession of the suit property. To substantiate the same, they have filed Ex.P.1 to Ex.P.6, to establish their possession of the suit property. The first respondent/plaintiff filed the above suit in O.S.No.201 of 2011 for declaration and recovery of possession, in which, the revision petitioners remained ex-parte and therefore, ex-parte order came to be passed. To set aside the same, the revision petitioners preferred an application under Order 9 Rule 13 of C.P.C., with the delay of 1536 days. The said petition was dismissed. Against which, revision was preferred in C.R.P(MD)Nos.278 and 279 of 2018 by the petitioners, which was also dismissed by this Court. Thereafter, the first respondent/plaintiff filed E.P.No.35 of 2015 for execution of delivery of possession. Though the petitioner appeared through counsel, failed to file their counter and therefore, they were set ex-parte



against which, revision was preferred before this Court. The said revision petition was also dismissed on the ground that there is an inordinate delay and the revision petitioners have not made a sufficient cause for condoning the delay. Thereafter, the petitioners have moved an application to condone the delay of 1536 days to prefer an appeal suit against the ex-parte decree passed in O.S.No.201 of 2011. However, the first appellate Court dismissed the said application by stating that no sufficient reason was given by the revision petitioners to condone the delay. Against which, the present revision is preferred. Even in the affidavit filed in support of this petition, the revision petitioners failed to give sufficient cause for the delay of 1536 days in filing the appeal.

7.On perusal of the records, it is seen that the revision petitioners failed to show any inclination to file petition immediately. Moreover, no sufficient cause shown for the delay and therefore, the first Appellate Court has rightly dismissed the application and there is no need of interference by this Court. Hence, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.09.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
Ns



K.GOVINDARAJAN THILAKAVADI, J.

Ns

To

1.The Sub-Court,
Theni.

2.The District Munsif Court,
Theni.

3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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