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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **R.VIJAYAKUMAR**

C.R.P.(MD)No.1911 of 2017

Asari

....Petitioner

Vs

1.P.R.Geetha

2.M.Mariathava Retna Bai

3.G.Jeya Paul

...Respondents

PRAYER: The Civil Revision Petition filed under Article 227 of Constitution of india, to call for the records relating to the orders passed in I.A.No.524 of 2012 dated 15.12.2014 in O.S.No.252 of 1997 on the file of the Additional District Munsif Court, Padmanabhapuram and set aside the same and allow this Civil Revision Petition.

For Petitioner :Mr.P.Prabhakaran

For R3 : Mr.F.X.Eugene

For R1 and R2 : No Appearance



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ORDER

The present Civil Revision Petition has been filed by the plaintiff in O.S.No.252 of 1997 on the file of the Additional District Munsif Court, Padmanabhapuram.

2.The plaintiff has filed the said suit for declaration of title and possession over 'B' schedule property, for permanent injunction and for mandatory injunction. The defendant had filed a written statement strongly disputing the contentions in the plaint. Subsequent to the filing of written statement, the body of the plaint and the prayer in the plaint were amended by way of an order dated 26.07.2001 in I.A.No.489 of 2001. In view of the newly added prayer, the valuation of the suit exceeded to Rs.30,000/-. Therefore, the District Munsif Court had returned the plaint under Order VII Rule 10 CPC by passing an order dated 13.09.2003 with a direction to re-present the same before the appropriate Court.

3.The plaint was not re-presented before the concerned Sub Court in time. Belatedly, when the plaintiff attempted to re-present the



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plaint before the Sub Court, the pecuniary jurisdiction of the District Munsif Court has been enhanced to Rs.1,00,000/- and therefore, the plaintiff had re-present the suit before the same Munsif Court along with I.A.No.524 of 2012 seeking to re-take the returned plaint by condoning the delay in re-presenting the same.

4.The defendant had filed a counter strongly contesting to the reasons assigned for the belated re-presentation of the plaint before the same Court. The Trial Court, after considering the submissions made on either side, had dismissed the said application on the ground that the plaintiff has not properly explained the reasons as to why the plaint was not re-presented within a reasonable time before the Subordinate Court. Challenging the same, the present Revision Petition has been filed.

5.The learned Counsel for the petitioner had contended that his Counsel, namely, Joseline Daniel was suffering from some mysterious disease and has regularly taking treatment at CMC Hospital, Vellore and therefore, he was not regularly attending the Court. According to the plaintiff, his Counsel has passed away on 17.09.2005. After his demise, he



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was not able to trace the bundle in his office and he could trace the bundle only on 15.10.2009. Thereafter, when he attempted to re-present the plaint before the Sub Court, the pecuniary jurisdiction of the Munsif Court had already been enhanced to Rs.1,00,000/-. In view of the aforesaid facts, there were delay in re-presenting the plaint before the same Court.

6.Per contra, the learned Counsel for the third respondent strongly opposed the said application on the ground that the plaint was returned by the Court on 13.09.2003, but the leaned Counsel for the plaintiff has passed away only after two years. This delay has not been explained. Even after the death of his Counsel, till October 2011, they have not re-presented the same before the proper Court. Only on 19.09.2011, I.A.No.524 of 2012 has been filed seeking permission of the Court to present the plaint. Hence, he prayed for sustaining the order passed by the Trial Court.

7.I have carefully considered the submissions made on either side and perused the materials on record.



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8.The Trial Court has chosen to reject the request of the plaintiff for re-taking the plaint mainly on the ground that the plaintiff was not vigilant enough in re-presenting the plaint before the proper Court. He could have re-presented it atleast within a period of six months from the date of return of the plaint by the District Munsif. However, after a period of eight years, the plaint has been re-presented before same Court.

9.This Court is of the view that the fact that the plaintiff's Counsel was suffering from a mysterious disease and he was not regularly attending the Court and ultimately, he passed away on 17.09.2005, have not been disputed. It could be understood that once the Counsel has passed away, the clients could find very difficult to trace their bundle, especially, those papers, which have been returned by the Court for re-presenting the same before the other Court. Therefore, the delay on the part of the party in re-presenting the same before the Sub Court, Padmanabhapuram is understandable. Once he had traced the bundle and the papers were re-presented with a request to re-take the same, the Trial Court was not right in dismissing the said application.



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10. In view of the aforesaid facts, the order passed in I.A.No.524 of 2012 in O.S.No.252 of 1997 dated 15.12.2014 is set aside. The Civil Revision Petition stands allowed. The learned Additional District Munsif, Padmanabhapuram, is directed to take the suit on file and proceed in accordance with law after giving due opportunity to both parties. Since the suit being re-presented after a long time, the trial Court, after numbering the suit, is directed to issue fresh summons to the defendants. No costs. Consequently, connected miscellaneous petition is closed.

14.09.2023

Index : Yes/No

Internet : Yes/No

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To

1. The Additional District Munsif, Padmanabhapuram.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

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