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CRP.731 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.731 of 2022

P. Venkatachalam

...

Petitioner

Vs.

V. Ponnulinga Gounder (Died)

P. Venkatasubramaniam

...

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 29.09.2021 passed by the learned Principal District Munsif, Tirupur in I.A.No.969 of 2019 in O.S.No.401 of 2009, dated 29.09.2021 dismissing the same.

For petitioner : Mr. R. Srinivas, Senior Counsel
for Mrs.V.Mythili

For Respondent : Mr.V. Karthikeyan



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ORDER

This Civil Revision Petition arises against the order of the learned Principal District Munsif, Thiruppur in I.A.No.969 of 2019 in O.S.No.401 of 2009, dated 29.09.2021.

2. The Civil Revision Petitioner is the plaintiff. He presented the suit for declaration of his title and for permanent injunction. According to the plaintiff, a large extent of property including the suit property devolved on the father of the plaintiff and the father of the 1st defendant, by virtue of a partition deed dated 02.12.1926. Thereafter, the parties have been in possession and enjoyment of their respective shares. The plaintiff would plead that the 2nd defendant tried to include the property of the plaintiff in his holdings which resulted in a misunderstanding between the parties. A reading of the plaint shows that the dispute is actually for a common pathway that existed between the holdings of the plaintiff and the



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holdings of the defendant and not the entire holdings of the plaintiff.

3. Yet, for reasons remaining unexplained, the plaintiff had filed a suit including his entire extent of 10.78 acres and also included the row of palm trees which divided his property from that of the defendant. The plaintiff also sought for removal of sheds etc., which was an obstruction created in the 2nd item of the property.

4. Written statement was filed and the Court framed issues. The parties were sent for trial. The trial commenced on 09.07.2018. On 19.07.2018, the plaintiff also marked the documents. Thereafter, the suit was adjourned to 11.08.2018, 24.08.2018, 07.09.2018 and finally on 19.09.2018. On the first of these dates, the plaintiff did not present himself for cross examination and on the last date both the plaintiff as well as his counsel were absent. The trial court, left with no other option, dismissed the suit for default. An Application for restoration was filed under Order 9 Rule 9 of the Court together with an application to condone the delay in



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filing the suit application. The delay was for 345 days.

5. The ground pleaded by the plaintiff for condonation of delay is that a Panchayat has been convened between the plaintiff and the defendant and the Panchayatdars had advised both of them to settle the issue. On account of the fact that the respondent fell sick, the settlement could not be finalised. Therefore, the plaintiff would plead since the matter was not settled, he did not appear before the court, which resulted in the dismissal. This application was received in IA.No.969 of 2019.

6. The 2nd defendant was served with the notice, he filed a counter shiftily opposing the same. He would state that he was healthy and not sick and there was no compromise between the parties. The 2nd defendant would also plead that the plaintiff attempted to dispossess him by using the his menials and it was prevented on account of the fact that he approached jurisdictional police.



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7. The learned trial judge, after consideration of the petition and counter, came to the conclusion that the plaintiff has not given reason for everyday's delay and hence dismissed the petition. Hence this Revision.

8. Heard Mr.R.Srinivas, learned senior counsel appearing for the petitioner and Mr.V.Karthikeyan, learned counsel appearing for the respondent.

9. Mr.R.Srinivas would submit that though the dispute only relates to a portion of the property, the suit had been presented for the entire extent of 10.78 acres. On account of the dismissal of this suit, it resulted in the filing of yet another suit in O.S.No.429 of 2019. He would state that his party did not appear before the court due to the settlement that had been arrived at before the Panchayatdars. He would plead since the property involved is a vast extent, a liberal approach may be taken by the court.



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10. Per contra, Mr.V. Karthikeyan, would submit that there is a no merits in this Revision. He would state that no evidence had been let in before the Trial Court regarding the Panchayat. If the story of the Panchayat should be considered to be true, the Panchayatdars could have been summoned and examined before this Court to substantiate the same. He would plead that none of this had taken place and the plaintiff cannot take advantage of the alleged illness of the respondent in order to restore the suit.

11. I have carefully considered the arguments of both sides. I have perused and gone through the records.

12. Here is the case where the plaintiff seeks for declaration of title for a vast extent of land measuring 10.78 acres. The dispute is not with respect to this extent, but for the extent dividing the property of the plaintiff and the defendants. The plaintiff and the defendant are close relatives. If a



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suit relating to immovable property is to be dismissed in full, it would affect vital rights of the plaintiff. Though the suit property is only the area dividing the plaintiff and the defendant's portions, the plaintiff has sought for relief over his entire holdings. The pleadings is that there was a Panchayat between the parties. As rightly contended by Mr.Karthikeyan, Panchayatdar ought to have been examined in order to substantiate that plea. However, for the failure of the plaintiff in not examining the Panchayatdar, I am not inclined to punish him. If the order is continued in revision, it will be putting the plaintiff at the risk of losing his entire holdings. In the interest of justice, the parties should arrive at a conclusion after trial. This is especially in a case where for a period of 10 years, the plaintiff and defendant had been diligently prosecuting the litigation. The delay is not enormous, but less than a year.

13. I find sufficient cause in the plea of the plaintiff that he did not prosecute since they were the close relatives and there were attempts for



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conciliation. Since it has failed, he has approached the court again to restore the suit. It must be noted that the plaintiff did not gain anything by letting the suit go for default. On the contrary, he has lot to lose, in case, the suit is not restored. At the same time, I would put the plaintiff on terms in order to ensure that he cooperates for the disposal of the suit.

14. Accordingly, finding sufficient cause, the Civil Revision Petition stands allowed. The order passed by the learned Principal District Munsif, Thiruppur in I.A.No.969 of 2019 in O.S.No.401 of 2019, dated 29.09.2021 is set aside on the condition that the plaintiff will pay to the defendant, a sum of Rs.15,000/- on or before 30.09.2024. In case, the cost is not paid on or before 30.09.2024, this order will not enure in favour of the plaintiff. If the cost is paid, the learned District Munsif will number the application under Order 9, Rule 9 and allow the same and put the parties in the same position as they were on 19.09.2018. The plaintiff has to present himself for cross examination and the proceedings are to take place with as much



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expedition as is necessary for a suit which is pending more than 15 years.

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15. With the above direction, this Civil Revision Petition is allowed.

No costs.

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Index: yes/no

Internet:yes/no

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To

The Principal District Munsif, Tirupur



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V. LAKSHMINARAYANAN, J.

msr

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