



WEB COPY



C.R.P.No.1740 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM :

The Hon'ble MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.No.1740 of 2023
and C.M.P.No.11276 of 2023**

Saira Banu

.. Petitioner

-VS-

A.Bibi (Died)
Mohammed Gouse (Died)
1. Gowhar Sulthana
2. M.G.Shahetha
3. M.G.Wahitha Sulthana
4. M.G.Syed Mushtaq
5. M.G.Syed Ashwaq
6. M.G.Ashviya Sulthana
7. M.G.Syed Ameen
8. M.G.Kowsar Sulthana
9. M.G.Anjum Sulthana
10.M.G.Thapasum Sulthana
11.G.Syed Samiullah
12.G.Ayisha Sulthana
13.M.G.Thanveer
14.M.G.Syed Hasheem

.. Respondents

Petition filed under Article 227 of the Constitution of India against the order dated 21.12.2022 made in I.A.No.1 of 2021 in O.S.No.119 of 2021 on the file of District Munsif, Krishnagiri.

For Petitioner : Mr.A.V.Arun



WEB COPY



C.R.P.No.1740 of 2023

For Respondents : Mr.P.Sesubalan Raja
for RR 1 to 3 and 6 to 12
: No appearance
for RR 4, 5, 13 & 14

* * * * *

ORDER

This civil revision petition arises against the order passed by the learned District Munsif at Krishnagiri in I.A.No.1 of 2021 in O.S.No.119 of 2011 dated 21.12.2022.

2. The plaintiff is the civil revision petitioner. O.S.No.119 of 2011 was presented before the learned Principal District Judge, Krishnagiri as O.S.No.81 of 2008. The relief sought for in the suit is for declaration of title of the plaintiff and for a further declaration that the decree obtained by the second defendant against the first defendant in O.S.No.117 of 1981 on the file of the learned Subordinate Judge, Krishnagiri, as null and void and for a further direction that the defendants should not interfere with the peaceful possession and enjoyment of the suit schedule mentioned property by the plaintiff.

3. This case has a chequered history. O.S.No.117 of 1981 was



C.R.P.No.1740 of 2023

presented by the second defendant as against the mother of the plaintiff. It was a suit for specific performance of an agreement of sale. The said suit was decreed by the learned Subordinate Judge and an appeal therefrom was allowed and the decree was set aside. It is not in dispute that a Letters Patent Appeal was preferred to a Division Bench of this Court, which was allowed and the judgment and decree of the learned Subordinate Judge stood restored. In other words, the suit for specific performance was decreed as prayed for.

4. Six years after the decree, the plaintiff presented the present suit stating that an oral 'Hiba' had been executed on 21.03.1980 by her mother, namely, the first defendant in the suit for specific performance and thereby, she became the owner of the property. Since she became the owner of the property, according to her, the decree passed in O.S.No.117 of 1981 is not binding on her.

5. On service of summons, the defendants entered appearance and filed a detailed written statement. Thereafter, the matter was posted for evidence. On 18.01.2017, it was listed for hearing.

6. The plaintiff pleads that she was suffering from Jaundice



C.R.P.No.1740 of 2023

from 2017 onwards and therefore, on account of the severe intensity of the affliction, she was not in a position to contest the case. She would state that after recovery, she attempted to contact her counsel and came to know that he had passed away in July, 2019. Taking advantage of the Covid-19 pandemic, she would plead that from March 2020 till 23.06.2021 she was not in a position to engage a new counsel and she finally did so and filed an application in I.A.No.1 of 2021. This application sought to condone the delay of 1591 days in filing the application to restore the suit.

7. On receipt of the petition, the learned District Munsif received a counter from the respondents. The respondents denied the plea of Jaundice by the plaintiff. The respondents further pleaded that the suit had been listed on 10.10.2014 and even on that date, the plaintiff was not present. Finally the matter was adjourned to 17.10.2014 on which date the proof affidavit was filed and the suit was listed for filing of documents on 11.11.2014. On account of the change in pecuniary jurisdiction of the Court, the suit was transferred from the file of the learned District Judge to the file of the learned Subordinate Judge, Krishnagiri and re-numbered as O.S.No.167 of 2010. Due to further increase in the pecuniary jurisdiction, finally the



C.R.P.No.1740 of 2023

suit went before the learned District Munsif and was re-numbered as O.S.No.119 of 2011. He would state that several opportunities were granted to the petitioner and yet there was no appearance from her and consequently the Court was left with no other option but to dismiss the suit for default on 18.01.2017. He pleaded that no cause, much less sufficient cause, had been given in the affidavit and therefore sought for dismissal of the application.

8. The learned District Munsif took into consideration that for a period of 483 days, the provisions of Limitation Act stood exempted on account of the directions given by the Supreme Court in "In Re Limitation Covid-19". After having given the deduction of 483 days, still there remained a delay of 1108 days. The learned Munsif found that no evidence had been let in by the plaintiff to substantiate the case that she was suffering from Jaundice from November 2017 till 15.03.2020 and consequently, dismissed the petition. Against the said order, the present civil revision petition has come up before this Court.

9. Notice was ordered in this revision on 15.06.2023. On service of notice, Mr.Sesubalan Raja appears for the contesting respondents.



C.R.P.No.1740 of 2023

WEB COPY

10. Heard Mr.A.V.Arun, learned counsel appearing for the petitioner and Mr.Seshubalan Raja, learned counsel for the contesting respondents.

11. I have gone through the papers and applied my mind to the facts of the case.

12. The condition precedent for the purpose of condoning the delay is the existence of "sufficient cause". Illness, no doubt, is a sufficient cause for condoning the delay. The period of delay does not matter and it is the explanation that matters. There are situations where the delay would be enormous but the explanation given by the petitioner would make out a sufficient cause and there exist cases where the period of delay is not so enormous but the explanation would be totally insufficient. Therefore, a strait-jacket formula cannot be applied. In this case, the learned District Munsif had taken into consideration the existence of Covid-19 pandemic and excluded a period of 483 days. Even after the exclusion of this period, the reason given for Jaundice is totally lacking in either evidence, oral or documentary. In fact, the petitioner had not produced any documents



C.R.P.No.1740 of 2023

before the Court to show that from 18.01.2017 till 15.03.2020 she was suffering from this infliction. It is admitted by the petitioner in her affidavit that in July 2019, she came to know that her counsel had passed away. A further period of three years remains absolutely unexplained. Sufficient cause not having been shown and the learned District Munsif having applied her mind to the facts of the case, I do not find any reason to interfere with the order. I do not find any cause much less sufficient cause given by the petitioner.

13. Therefore, the civil revision petition is dismissed. The order of the learned District Munsif, Krishnagiri, dated 21.12.2022 in I.A.No.1 of 2021 in O.S.No.119 of 2011 stands confirmed. No costs. Consequently, connected miscellaneous petition is also dismissed.

21.06.2024

Index : Yes/No
Website : Yes/No
Speaking/Non-speaking Order

sra

To

The District Munsif,
Krishnagiri.



WEB COPY



C.R.P.No.1740 of 2023



WEB COPY



C.R.P.No.1740 of 2023

V.Lakshminarayanan, J.

(sra)

C.R.P.No.1740 of 2023

21.06.2024