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C.R.P.No.3228 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.3228 of 2024

K.Sameem

... Petitioner

Vs

1. K. Alijon

2. Ushadevi

... Respondents

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code, pleaded to set aside the fair and decreetal order dated 23.09.2023 passed in I.A.No.1 of 2021 in I.A.No.1735 of 2013 in I.A.No.44 of 2012 in O.S.No.835 of 2008 on the file of the learned Principal District Munsif, Salem.

For Petitioner : Mr.P.Jagadeesan

ORDER

The Civil Revision Petition has been filed against the order passed by the learned Principal District Munsif, Salem, on 23.09.2023 in I.A.No.1 of 2021 in I.A.No.1735 of 2013 in I.A.No.44 of 2012 in O.S.No.835 of 2008.



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2. The brief facts of the case is that the petitioner/plaintiff has filed a suit in O.S.No.835 of 2008 before the learned Principal District Munsif, Salem, against the respondents/defendants, seeking for a declaration of sale deed, which stands in favour of the second petitioner/2nd defendant, as null and void and also for permanent injunction restraining the defendants/respondents from interfering with her peaceful possession and enjoyment of the suit property. The said suit was dismissed for default on 25.11.2010. Subsequently, the petitioner/plaintiff has filed an application in I.A.No.44 of 2012 under Section 5 of the Limitation Act r/w 151 of CPC to condone the delay of 61 days in filing the petition to restore the said suit and the same was dismissed for default on 10.07.2012. Thereafter, the petitioner has filed an application in I.A.No.1735 of 2013 to condone the delay of 462 days in filing the restore application in I.A.No.44 of 2012 in O.S.No.835 of 2008, which was also dismissed for default on 05.06.2014. Thereafter, the petitioner has filed an application in I.A.No.1 of 2021 to condone the delay of 2645 days in filing the restore application in I.A.No.1735 of 2013. The learned trial Judge, has dismissed the application on 23.09.2023 stating that the reason for the delay is not properly explained by the petitioner. Aggrieved over the same, this present civil revision petition has been filed by the petitioner/plaintiff.



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3. Learned counsel for the petitioner submitted that the petitioner/plaintiff has filed a suit in O.S.No.835 of 2008 on the file of the Principal District Munsif, Salem and since the petitioner's husband was bedridden, she was unable to appear before the trial Court, therefore, the suit was dismissed for default on 25.11.2010. Thereafter, due to her ill health and some other reasons, she was unable to appear before the trial Court in the subsequent condone delay applications filed by her in I.A.No.44 of 2012 and I.A.No.1735 of 2013, therefore, those applications were also dismissed for default. Thereafter, due to her sudden ill health and severe jaundice, she was taking native treatment and thereby, she was unable to contact her counsel. Later, only after lifting of the lock down prevailed due to Covid-19 pandemic, the petitioner has was able to file an application in I.A.No.1 of 2021 on 01.10.2021 to condone the delay of 2645 days in filing the restore application in I.A.No.1735 of 2013, whereas, the trial Judge, without considering the valid reasons stated by the petitioner for such delay, had dismissed the same on 23.09.2023. Thereby, he seeks to set aside the same.

4. Heard the learned counsel for the petitioner and perused the materials available on record.



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5. On perusal of record, it is seen that the suit filed by the petitioner/plaintiff for declaration and permanent injunction was dismissed for default on 29.11.2017 and the subsequent applications filed by her to condone the delay in filing the restore applications were also dismissed for default. Thereby, the petitioner has filed an application in I.A.No.1 of 2021 to condone the delay of 2645 days in filing the restore application in I.A.No.1735 of 2013. The reasons stated by the petitioner is that since she was taking native treatment for jaundice and further Courts were closed for Covid-19 pandemic, there was a delay of 2645 days in filing the restore application.

6. The trial Court holding that the petitioner had not shown any sufficient cause to condone the delay and the reasons for the delay have not been properly explained, had dismissed the application. Though the petitioner challenging the same filed the revision petition before this Court, even before this Court no proof has been shown to prove her ill health during the relevant period which prevented her from filing the restoration petition in time. Therefore, the trial Court had rightly finding that the petitioner has not shown sufficient cause to condone the delay, dismissed the application.



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WEB COPY 7. In view of the above, this Court does not find any illegality or infirmity in the order passed by the learned trial Judge. Accordingly, the Civil Revision Petition stands dismissed. No costs.

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Index : Yes / No
Neutral Citation : Yes / No
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To
The Principal District Munsif, Salem



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A.D.JAGADISH CHANDIRA, J.

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