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C.R.P.No.2066 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2066 of 2020

Pottukannu Ammal (Died)
G.Ramalingam

... Petitioner

Vs.

Narasimhan (died)
1.Murthy
2.Mohanraj
3.Thamaraiselvan
4.Parthiban
5.Chandra
6.Vijaya
7.The Tahsildar
Thirukoilur

8.Indiraniammal @ Indirani
9.Anbarasi
10.Chitra

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decreetal order in I.A.No.338 of 2011 in Unnumbered Appeal Suit dated 15.07.2020 on the file of the Principal Sub-Ordinate Judge, Villupuram.



C.R.P.No.2066 of 2011

For Petitioner : M/s.Vijayan Subramanian
For respondents 1 to 6 & 8 to 10 : Mr.R.Rajarajan
for M/s.D.Rajasekar
For respondents 7 : Mr.V.Jeeva Giridharan
Additional Government Pleader

ORDER

The Civil Revision Petition is filed challenging the order passed by the First Appellate Court dismissing the application filed by the petitioner to condone the delay of 1357 days in filing first appeal.

2.The petitioner herein and five others filed a suit in O.S.No.329 of 2002 on the file of I Additional District Munsif, Tirukoilur seeking declaration plaintiffs and 1st defendant therein were Class I heirs of one Govindasamy Chettiar. The said suit was dismissed on 06.02.2002. Thereafter, the petitioner herein filed an appeal along with condone delay petition on 25.11.2011. The petitioner sought for condonation of the delay of 1357 days in filing first appeal.



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3. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that the case was conducted by the 2nd plaintiff in the suit and the petitioner, who was arrayed as 6th plaintiff in the suit was all along in Bombay in connection with his work and hence, he was not aware of the disposal of the suit and after returning to his native place, on enquiry, he acquired knowledge about the disposal of the suit and immediately, the present appeal has been filed with condone delay petition.

4. The said application was opposed by the contesting respondents by filing counter that petitioner was aware of the disposal of the suit and subsequent to the disposal of the suit, the petitioner along with one Chandira, Vijaya and Selvi had executed release deed on 18.07.2008 affirming the decree and judgment passed in the suit and they also agreed to cancel the agreement dated 03.11.2004 executed in favour of Thangaraju and others and the same was registered as Document No.2828 of 2004 on the file of Sub-Registrar, Tirukoilur. It was also stated in the counter affidavit that the petitioner and others cancelled said agreement by way of registered document dated



25.07.2008. Hence, it is the specific contention of the contesting respondents that averments in the affidavit as if the petitioner came back to his native place now only and acquired knowledge about the suit was false statement.

5. Before the First Appellate Court, the petitioner was examined as P.W.1 and four witnesses were examined on behalf of the respondents as R.W.1 to R.W.4. On behalf of the respondents, 7 documents were also marked as Ex.R1 to Ex.R7. The unregistered release deed dated 18.07.2008 and cancellation deed dated 25.07.2008 executed by petitioner and others, referred to in the counter of contesting respondents were marked as Ex.R5 and Ex.R3. In fact, registered cancellation deed dated 25.07.2008 was marked through the petitioner when he was examined as P.W.1.

6. The registered cancellation deed dated 25.07.2008 marked as Ex.R3 through cross-examination of petitioner herein would prove that petitioner came back to his native place even on July 2008 immediately after disposal of the suit. Therefore, the averment in the affidavit filed in support of the condone delay petition as if the petitioner came back only in 2011 and



C.R.P.No.2066 of 2024

acquired knowledge about the suit is not at all acceptable. Further, in Ex.R5, the unregistered release deed dated 18.07.2008, there is a reference about disposal of the suit. Subsequently, under Ex.R3, a registered cancellation deed was also executed by petitioners as agreed to cancel the earlier sale agreement dated 03.11.2004. In such circumstances, the averment made by the petitioner as if he acquired knowledge about the disposal of the suit only in 2011 is not at all acceptable.

7. The first Appellate Court, on proper appreciation of evidence of P.W1 and other witnesses on behalf of the respondents and the documents marked as Ex.R1 to Ex.R7, rightly came to the conclusion that petitioner failed to show sufficient cause for condoning huge delay of 1357 days. Hence, I do not find any error in the order passed by the First Appellate Court. Accordingly, the Civil Revision Petitions stands dismissed. No costs.

01.03.2024

Index : Yes / No

Internet : Yes / No

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C.R.P.No.2066 of 2020

The learned Principal Sub-Ordinate Judge, Villupuram.

S.SOUNTHAR, J.

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CRP.No.2066 of 2020

01.03.2024