



C.R.P(MD)No.214 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.12.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.214 of 2024

1.Ramarajan

2.Elango

3.Siva

... Petitioners / Defendants 1,2 & 4

Vs

1.Ammal Thangam

... 1st Respondent / Plaintiff

2.Lingakumar

... 2nd Respondent / 3rd Defendant

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 10.11.2023 made in I.A.No.1 of 2022 in A.S.No.40 of 2013 on the file of Sub Court, Valliyoor and allow the Civil Revision Petition.

For Petitioners : Mr.V.Sasi Kumar

For R1 : Mr.M.Subbiah
for Mr.V.S.Rishikesh

For R2 : No appearance



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ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 10.11.2023 made in I.A.No.1 of 2022 in A.S.No.40 of 2013 on the file of Sub Court, Valliyoor and allow the Civil Revision Petition.

2. The suit in O.S.No.160 of 2003 was filed by the respondent herein against the revision petitioner and others, seeking the relief of declaration that he is the absolute owner of the suit property and for consequential permanent injunction. The suit was decreed on 31.12.2005 against which A.S.No.53 of 2006 was filed. That was also allowed on 31.10.2005, against which S.A.(MD)No.37 of 2008 was filed. By allowing the Second Appeal, the matter was remitted back to the trial Court for fresh consideration, granting liberty to the parties to adduce additional evidence. After remand, again the suit was decreed in favour of the plaintiff and with cost. Against which, the defendant intend to file an appeal. They filed A.S.No.40 of 2013 before the Subordinate Court, Valliyoor. But when the matter was called, there was no representation



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for the appellant namely the revision petitioner herein. So the appeal was dismissed for default on 25.02.2019. There was a delay of 1122 days in preferring a petition to set aside the dismissal order. To condone the delay, the subject petition was filed stating that the appeal was posted for argument on 05.02.2019. Learned counsel on record for the revision petitioner stated that the matter is pending for more than 5 years, it was dismissed for default. The Advocate Clerk has wrongly noted the hearing date in his diary. The dismissal came to the notice of the revision petitioner only when the respondent filed a complaint along with the decree copy. Later, the Covid-19 Pandemic situation arose. When the advocate wants to use the document, it was informed that the documents were submitted to Central Records, Tirunelveli. So there is a delay.

3. That was resisted by the respondent by filing counter, stating that the regular Court hearings started in June, 2021. During that period, the petitioner has not taken any steps to file any petition and there is no explanation for the delay during that period also. Apart from that it is also stated that no proper reason is assigned. The Appellate Court, after hearing both sides dismissed the petition stating that no proper reason is



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assigned. Against which this Civil Revision Petition is preferred.

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4. Heard both sides.

5. A bald allegation has been made by the revision petitioner in the affidavit that his advocate clerk has wrongly or omitted to note the hearing date, because of that only he could not appear before the appellate Court. This sort of contention without any basis cannot be accepted. It is not only the duty of the revision petitioner but also the duty of the concerned advocate to prosecute the matter properly. They cannot say that they were negligent in their duty. Moreover, as mentioned by the respondent herein even after starting of regular Court hearings, the revision petitioner has not taken any steps. Again a bald averment is made that the advocate on record wanted to peruse certain documents. Those documents were already sent to Central Record Room, Tirunelveli and so there was a delay. These are all the reasons which are bald in nature and without any evidence.



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6. As mentioned above it is seen that the second round of litigation between the parties. The first round went up to the High Court, the matter was remitted back, again suit was decreed in favour of the respondent. Even though the statutory right was exercised by the revision petitioner herein, but having failed to prosecute the matter in a diligent manner, now they cannot say that opportunity must be given to them. Such sort of attitude cannot be encouraged and accepted. So the order passed by the appellate Court suffers from no legality.

7. For all those above said reasons, this Civil Revision Petition is dismissed. No costs.

02.12.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

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To

- 1.The Subordinate Judge, Valliyoor.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

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G.ILANGO VAN, J.

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