



C.R.P.(NPD)(MD).No.943 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)No.943 of 2019

and

C.M.P(MD) No.5391 of 2019

Subbulakshmi

... Petitioner/Petitioner/Appellant

-vs-

1. Balaiahkonar (died

2. Palanikumar

Sankaralingam Pillai (died)

3. Kalyaniammal

4. Karuppaiah Pillai

5. Valliammal

... Respondents/Respondents/
Defendants 2 to 5

6. Maniyan

7. Gurulakshmi

... Respondents 6 and 7/Proposed
Respondents 7 and 8

8. Velmurugan

9. Thirupathi Kumar

... Respondents 8 and 9

(Respondents 8 and 9 are brought on record as LR's of the deceased 1st Respondent vide order of this Court dated 03.04.2024 made in C.M.P(MD) Nos.17521 to 17523 of 2023 in C.R.P(MD) No.943 of 2019).



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PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C, challenging the order in I.A.No.146 of 2015 in A.S.No.28 of 2007, dated 28.01.2019 on the file of the Sub Court, Sankarankovil.

For Petitioner : Mr.A.Haja Mohideen
For R 1 : died
For R2 to R7 : No appearance
For R8 & R9 : Mr.F.X.Eugene

ORDER

The present Civil Revision Petition has been filed by the appellant in A.S.No.28 of 2007 on the file of the Sub Court, Sankarankovil as the revision petitioner.

2. The first respondent herein had filed O.S.No.75 of 2005 on the file of the Principal District Munsif Court, Sankarankovil, for the relief of declaration of title and permanent injunction. The suit was decreed on 15.12.2005. The revision petitioner herein as the appellant had filed A.S.No. 28 of 2007 on the file of the Sub Court, Sankarankovil. When the case was listed on 30.06.2010, for the arguments on the side of the appellant, due to the non-appearance, the Appeal Suit was dismissed for default. Thereafter, the present application in I.A.No.146 of 2015 has been filed to condone the delay



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of 1635 days in filing an application to restore the appeal.

3. The revision petitioner/appellant had contended that she was not aware of the dismissal of the first appeal and she came to know about the same only when she was called upon to appear before the Revenue Authorities on 22.12.2014 in connection with the patta proceedings. Therefore, she had prayed to condone the delay and to restore the appeal.

4. On the other hand, the first respondent in the appeal/decreed holder had contended that he had filed W.P(MD)No.8860 of 2007 before the Madurai Bench of Madras High Court for transfer of patta in their names pursuant to the trial Court decree. The said writ petition was allowed on 09.04.2013. Challenging the said order, the appellant had filed W.A.(MD) No. 1365 of 2015 and the same was dismissed on 15.12.2015. The present I.A.No. 146 of 2015 to restore the appeal has been filed only in January 2015. Therefore, the contention of the revision petitioner/appellant that she was not aware of the dismissal of the appeal is not factually correct and she got positive decree in the suit at the relevant point of time. Considering the above said facts, the first appellate Court had found that the delay is huge and the reasons are not believable and dismissed the application. Challenging the



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same, the present Civil Revision Petition has been filed.

5. According to the learned counsel appearing for the revision petitioner, they have engaged a counsel and argued before the first appellate Court who had abandoned practice. Therefore they were not in a position to get the details about the day-to-day hearing of the appeal. Therefore, the delay may be condoned and time limit may be fixed for disposal of the appeal. Valuable property rights are involved and hence, an opportunity may be granted to the defendants/appellants.

6. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. It is the specific case of the revision petitioner herein that she was not aware of the dismissal of the first appeal on 30.06.2010. She had further stated that she came to know about the dismissal of the first appeal only when she was called upon to appear before the Revenue Authorities on 22.12.2014 in connection with the patta proceedings. However, in the Writ Petition was filed by the petitioner/plaintiff in W.P.(MD) No.8860 of 2007, there is a



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reference about the dismissal for default of the first appeal. The said writ petition was allowed on 09.04.2013. The present application to condone the delay has been filed in January 2015, nearly after two years and the averment that she came to know about the dismissal of the first appeal only on 22.12.2014 is not true. Therefore, it is clear that the revision petitioner/ appellant/defendant had not approached the Court with clean hands and therefore, the first appellate Court has rightly dismissed the condone delay application and there is no merit in the Civil Revision petition.

8. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

08.04.2024

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

To
1. The Sub Court,



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