



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15.07.2024

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**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

C.R.P(MD)No.1258 of 2022

Umasankar

..Petitioner/Respondent/Appellant

Vs.

Paramasivan(Died)

...Defendant

1.Lakshmi

2.Sathya

3.P.Gomathi

4.L.Gomathi

5.Minor. Swetha

6.Minor.Mukilan

(Rep. by their father and natural guardisn4th respondent
herein)

7.A.P.Ravimurugan

8.Arunachalam

9.Arumugam

..Respondents 1 to 9/Respondents 1
to9/legal heirs of defendant.

Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order passed by the Sub Court, Sankarankovil in I.A. No.1 of 2019 in unnumbered appeal suit on 26.11.2021.

For Petitioner

:Mr.M.JothiBasu

For R1

: Mr.P.Shanthana Krishnan

For 2 to 9

:No appearance

**ORDER**

The Civil Revision Petition is filed to set aside the fair and decreetal order passed by the Sub-Court, Sankarankoil in I.A.No.1 of 2019 in unnumbered appeal suit, on 26.11.2021.

2.The above interlocutory application is filed to condone the delay of 1398 days delay in filing the appeal suit. The suit was filed by the petitioner/plaintiff to declare that the plaintiff is the owner of the Schedule 'B' property and consequently, for a permanent injunction restraining the defendant from interfering with the said property.

3.According to the plaintiff, the plaintiff's father purchased the Schedule 'A' property and after the demise of the plaintiff's father, there was a partition between the plaintiff and his brother, in which, the schedule 'A' property was allotted to the plaintiff. The plaintiff had put up a house and was in enjoyment, schedule 'B' which is an extent of five 5 x 27 feet was sought to be encroached upon by the defendant who is the adjacent owner of the property and hence, the suit.

4.The suit was resisted by the defendant on the ground that the said extent does not form part of the Schedule 'A' property and it is indeed the



defendant's property.

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5. The trial Court went into the case of the parties and considered the evidence let in on behalf the plaintiff and concluded that the plaintiff failed to prove that the plaintiff had title in respect of the suit schedule 'B' property and dismissed the suit. The said judgment and decree was passed on 18.08.2015.

6. It can be seen that after the judgment and decree was pronounced, not even a copy application was filed, only on 11.06.2019, a copy application is filed and after obtaining the copies on 21.06.2019, the present appeal suit is filed with a delay of 1398 days. The reasons mentioned for condonation of delay is that the plaintiff is residing outside of the suit property and since he was not residing there, he could not contact the counsel and immediately file copy application and file the appeal. The said version was contested by the defendant Documents were marked to the effect that the plaintiff was indeed contesting yet another money suit which was filed against the plaintiff during the relevant time and he had even appeared before the Court on several occasions and therefore, the reasoning as if he was away for a period of three years and could not contact his counsel is false. The trial Court found truth in the version of the defendant



and finding that the reasons mentioned by the petitioner as false, dismissed the application. As against which, the present civil revision is filled.

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7.Mr.Jothi Basu, learned counsel appearing on behalf of the petitioner would submit that the trial Court ought to have seen that the plaintiff has been put to grave prejudice on account of erroneous judgment passed by the trial court and as such one opportunity to be given him to contest the appeal suit on merits. He would further submit that the defendant did not even mark any documents in the suit. When the plaintiff has produced his sale deed in favour of his title, the trial Court did not consider the same only by reasoning that the plaintiff did not prove the vendor's title, the suit was dismissed. Such an approach of the trial Court is erroneous and as such, the lower appellate Court ought to have granted him an opportunity to contest the appeal suit on merits.

8.Per contra, Mr.Santhana Krishnan, learned counsel appearing on behalf of the respondent would submit that firstly in this case even though the plaintiff had produced the title deed, had miserably failed to prove that the schedule 'B' property is a part of the schedule 'A' property and only after considering the same, the suit was dismissed on merits. When the plaintiff did not even care to file a copy application until the year 2019, this is not a



case where this Court should interfere and grant him one more opportunity.

He would further submit that the defendants have produced documents in the inquiry and has proved that the reasons mentioned in the affidavit filed in support of the application are false.

9.I have considered the submissions made on either side and perused the material records of the case.

10.The application is to condone the huge delay of 1398 days. Even for taking a lenient view, the petitioner should furnish proper and sufficient reasons. When the defendant had produced Ex.R1 to Ex.R4 to show that the plaintiff at the relevant point of time was very much present and was appearing in the Court in the connected proceedings, the reason given as if the plaintiff was away for a period of three years and could not contact his counsel was proved before the lower appellate Court as incorrect.

11.The suit property is relating to an extent of 5 ¼ feet x 27 feet and the dispute is a boundary dispute. The trial Court considered the case of the parties and dismissed the suit. This Court takes all these facts and overall circumstance of the case. This Court is of the view that no case is made out on behalf of the petitioner to interfere with the findings of the lower



appellate Court, which has exercised its discretion and chosen to dismiss the application with a huge delay of 1398 days.

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12.In view thereof, this Civil Revision Petition fails and accordingly the same stands dismissed. No costs.

15.07.2024

NCC:Yes/No

Ns

To

The Sub Court,
Sankarankovil.



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D.BHARATHA CHAKRAVARTHY, J.

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