



C.R.P(MD)No.347 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.11.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

**C.R.P(MD)No. 347 of 2023
and
C.M.P(MD)No. 1691 of 2023**

M.Ravichandran

... Petitioner / Appellant

Vs

1.R.Paramasivan

2.S.Sivasubramanian

3.G.Santha Devi

... Respondents / Respondents

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order dated 23.03.2022 passed in I.A.No.1 of 2020 in C.M.A.No.--of 2020 on the file of the Subordinate Judge, Theni.

For Petitioner : Mr. N.Vallinayagam

For R3 : No appearance



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ORDER

This Civil Revision Petition is filed to set aside the order dated 23.03.2022 passed in I.A.No.1 of 2020 in C.M.A.No.--of 2020 on the file of the Subordinate Judge, Theni.

2. The facts in brief is that the revision petitioner herein filed E.A.No.29 of 2016 before the District Munsif Court, Bodinayakanur, stating that the suit property originally belongs to one Sivasubramani and Chandrasekaran. They entered into a sale agreement with one Chellapandi @ Muneeswari on 31.10.2003. There was an issue between them over the agreement. So Chellapandi @ Muneeswari filed a suit in O.S.No.1 of 2006 before the Fast Track Court, Periyakulam. It was decreed on 28.01.2007. The property was brought for sale in E.P.No.31 of 2009. In the public auction one Jothimani purchased the property for Rs.10,00,500/- on 25.07.2011, which was confirmed in E.A.No.34 of 2012 on the file of the Fast Track Court, Periyakulam. Delivery was effected on 21.08.2013. She was in possession. Later she executed a settlement deed in favour of the petitioner on 01.09.2014. Ever since, the



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petitioner is in possession and enjoyment. When delivery was about to be effected in the present suit, the petitioner informed the Amin on 05.12.2014 about his right. Later, on enquiry, it came to his knowledge that a suit in O.S.No.70 of 2004 filed by the second respondent herein / first defendant. Against the second respondent, that suit was decreed. To execute the decree, E.P.No.23 of 2005 was filed. In which, the third respondent herein purchased the property in an auction purchase. Since the revision petitioner had right in the property, the attachment and sale are not valid.

3. That application was resisted by the respondent herein. It was dismissed on 28.11.2018, finding that the property was attached in I.A.No.114 of 2004 on 25.06.2004. The sale agreement entered between the second respondent namely Sivasubramani and Chandrasekar, and Chellapandi @ Muneeswari, does not create any interest in the property. The property was attached well before the initiation of suit by Chellapandi @ Muneeswari in an auction sale on 21.02.2011. So the claimant has no right in the property and accordingly dismissed the same.



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4. Against which, a Civil Miscellaneous Appeal has been filed by the revision petitioner. In filing the same, there is a delay of 534 days. He filed I.A.No.1 of 2020 before the appellate Court namely Subordinate Judge, Theni. That came to be dismissed by the appellate Court by order dated 23.03.2022, finding that no proper reason was assigned by the revision petitioner to condone the delay and the reason mentioned in the petition also is not supported by any evidence. Against which this Civil Revision Petition is preferred.

5. Heard the revision petitioner.

6. The third respondent did not appear inspite of receipt of notice. Whether the order passed by the appellate Court in I.A.No.1 of 2020 suffers from any illegality, is the only point to be decided in the revision petition. For that purpose, the reason assigned by the revision petitioner requires consideration. It has been stated by the petitioner that a copy application was filed in the first week of April, 2018 and thereafter he suffered Jaundice, taking native treatment. Only in the mid of March 2020, he recovered from the illness and after that the Corona Period



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occurred. So he was unable to collect the copies from the advocate and there is a delay.

7. E.A.No.29 of 2016 was dismissed on 28.11.2018. For filing the appeal, 30 days time was available to him. So he ought to have filed the appeal on or before 27.12.2018.

8. According to the respondent, before the appellate Court, the delay is wrongly calculated as 528 but actual days of appeal is 648 days. We need not concentrate much on this point. The only point is to be considered is whether proper reason is assigned for the delay. The revision petitioner has only stated that he has suffered by Jaundice and later Corona pandemic lock down period occurred and there is a delay which is absolutely not acceptable in nature.

9. Learned counsel on record for the revision petitioner relied upon the following judgments:

i) judgment of the Hon'ble Supreme Court reported in **CDJ 1998 SC 692** in the case of **N.Balakrishnan Vs M.Krishnamurthy**

ii) judgment of the Hon'ble Supreme Court reported in **2020 3 LW**



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385 in the case of *N.Mohan Vs R.Madhu*

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iii) judgment of this Court reported in **2019 3 LW 233** in the case of *The Commissioner, Coimbatore City Municipal Corporation, Vs B.Kulasekar and another*

10. No doubt that so far as condonation of delay is concerned, a lenient view must be taken. But at the same time, the lethargic attitude of the litigants and the inconvenience caused to the other side can not be lost sight off. Whether the petitioner was diligent in prosecuting the appeal, if examined the papers, it does not show his bonafideness. Even for re-presentation of the revision there is a delay of 99 days. He filed C.M.P.No.806 of 2023 to condone the delay of 99 days in making representation of the CRP. The delay was condoned. Even for explaining the delay, it has been stated by him that it occurred due to the time taken for getting the papers from the trial Court. So this itself indicates that even at the time of preferring the appeal, he was not diligent. Stating that he was affected with Jaundice is without any corroborative documents. This reason without any basis cannot be and should not be allowed.



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11. I find absolutely no error committed by the appellate Court in dismissing the petition in I.A.No.1 of 2020 in C.M.A.No.--of 2020.

12. With the above said, this Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition stands closed.

18.11.2024

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

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To

- 1.The Subordinate Judge, Theni.
- 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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