



C.R.P. (MD) No. 1833 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 1833 of 2022
and
C.M.P. (MD) No.8241 of 2022

P.Balu

... Petitioner/
4th Defendant

-VS-

1.N.Duraisamy
2.D.Mohanasundhram
3.S.Dhanalakshmi

... Respondents/
Plaintiffs

P.Saravanamuthu (Died)
4.P.Selladurai
5.S.Lakshmi
6.S.Sellamani
7.S.Kalaivanan
8.S.Mathivanan

... Respondents 4 - 9/
Defendants 1,3,5 to 8

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 01.07.2022 made in I.A.No. 2 of 2021 in A.S.No.22 of 2019 on the file of the learned Additional District Judge, Karur.



For Petitioner : Mr.I.Velpradeep

For Respondent : Mr.P.Athimoolapandian for R1 to R3

ORDER

The Civil Revision Petition is directed against the order dated 01.07.2022 made in I.A.No.2 of 2021 in A.S.No.22 of 2019. The said application was filed to condone the delay of 743 days to readmit the appeal which was dismissed for default on 26 to 2019. The suit in O.S.No.343 of 2011 was filed by the plaintiffs with a prayer to declare the plaintiffs 1 to 3 as the absolute and exclusive owners of the suit A, B and C scheduled properties and with a consequential relief directing the defendants to deliver possession of the suit property to the plaintiffs within the stipulated period.

2. The suit was resisted by the defendants, *inter alia*, on the grounds of perfecting title by adverse possession. The Trial Court framed 9 issues including the issue of limitation and adverse possession as issue No.4. By a judgment and decree dated 06.09.2017, rejected the case of the defendant and decreed the suit as prayed for. As against the same, the present appeal suit in A.S.No.22 of 2019 was filed by the petitioner herein. The appeal suit was posted for arguments on 23.01.2019, 05.02.2019, 08.02.2019, 13.02.2019,



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22.02.2019, 25.02.2019 and finally, as a last chance, the matter was posted for arguments on 26.02.2019. Since the petitioner appellant side was not ready for argument, the appeal suit was dismissed for default by order dated 26.02.2019. Thereafter, the respondent/plaintiff had filed execution petition in E.P.No.264 of 2019 in which, notice was again served on the petitioner. The petitioner was represented by the learned Counsel in the said execution petition and even counter-affidavit is filed in the execution petition in the year 2020 also. While so, belatedly, in the year 2021, the present application in I.A.No.2 of 2021 is filed to restore the appeal suit along with the delay of 743 days, which is dismissed by the Trial Court. Aggrieved by which, the present civil revision petition is filed.

3. The learned Counsel appearing on behalf of the petitioner would submit that when the appeal suit was filed within time, only because the petitioner was not well, he could not prosecute the same and one more opportunity should be given to the petitioner. The appellate Court ought to see that substantial prejudice would result to the petitioner. She would submit that in the matters of condonation of delay, the Court should take lenient view and when the petitioner has mentioned sufficient reason of illness in the affidavit filed in support of the application, the Trial Court ought to have considered the



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same.

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4. Per Contra, the learned Counsel appearing on behalf of the respondents would submit that the reasons mentioned in the affidavit is that he is diabetic and is suffering from knee pain. However, the said disease are not in the nature of preventing the petitioner from attending the Court. As a matter of fact, the petitioner was appearing in the execution petition and was even filing counter in the execution petition and therefore, when no sufficient reasons are mentioned in the affidavit filed in support of the application, the Trial Court has rightly rejected the application.

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

6. This Court takes notice of the pleadings made in the plaint as to the title of the property and the pleadings made by the respondent in their written statement and the judgment of the Trial Court in detail regarding the issues and answering the same in favor of the plaintiff. In that backdrop, it can be seen that the plaintiff has mentioned that he is suffering from diabetes and has got knee pain as the reasons to condone the delay of 743 days. When even during the



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interregnum, when the very same petitioner was served with the notice in the execution petition and was contesting the said execution petition by filing a counter, leaving the appeal suit for default for a long time and filing the application to condone the huge delay of 743 days was considered by the Trial Court and found that the reasons mentioned in the application as not sufficient and refused to condone the delay and dismissed the petition.

7. I do not find any compelling reasons to interfere with the exercise of discretion by the lower appellate Court considering the overall facts and circumstances of the case. When the petitioner has not properly explained the delay and especially, when the petitioner has been attending the execution petition in the interregnum I am unable to interfere with the order. Therefore, finding no merits, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

24.07.2024

NCC : No

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To



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D.BHARATHA CHAKRAVARTHY, J.

PKN

1. The Additional District Court, Karur.

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