



C.R.P(MD)No.1711 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1711 of 2019

and

C.M.P(MD)No.8808 of 2019

Sam G.Jeba Joselin

... Petitioner/Petitioner
Appellant

Vs.

- 1.Victoria
- 2.Edwin Fred Dennis
- 3.Vincent Lurie Dennis
- 4.Godson
- 5.Retnabai
- 6.Karuna Bai
- 7.Bernard
- 8.Jones
- 9.Vayala Eastus

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10.Lakshmi

11.Subramonian

12.Padmanabha Pillai

13.Leela

14.Rajeswari

15.Murugan

16.Remma

17.Chidambarathanu Amma

18.Thirumalaiyappa Pillai

19.Arumugham Pillai

20.Nagamony Pillai

21.Vanaja Sreekantan

22.The Senior Superintendent of Post Office,
Kanyakumari Division,
Nagercoil.

23.The Sub Post Master,
LSG Marthandam.

24.Davidraj

25.Paul Daniel

... Respondents/Respondents
Defendants



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(Respondents 1, 2, 3, 5, 7, 20 died and steps taken in the Lower Court itself. Except 19 & 25 other respondents were set ex parte before the Lower Court. Hence, notice to respondents 1 to 18 & 20 to 24 be dispensed)

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order, dated 30.07.2019 in I.A.No.520 of 2014 in A.S.S.R.No.353 of 2014 on the file of the Subordinate Judge, Kuzhithurai.

For Petitioner : Mr.G.Prabhu Rajadurai

R-1 to R-3, R-5,
R-7, R-10 to
R-18, R-20, R-21
& R-24 : Dispensed with

For R-4, R-6, R-8,
R-9 & R-25 : Mr.V.M.Balamohan Thampi

R-19 : Deceased

For R-22 & R-23 : Mr.S.Jeyasingh



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ORDER

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The instant revision petition has been filed by the appellant in A.S.S.R.No.353 of 2014 on the file of the Subordinate Court, Kuzhithurai, challenging the dismissal of his condone delay application in I.A.No.520 of 2014.

2. According to the learned Counsel appearing for the revision petitioner, the respondents herein had filed the above said suit in O.S.No. 896 of 1971 for the relief of redemption of an usufructuary mortgage. A preliminary decree came to be passed on 03.01.2001 and a final decree came to be passed on 10.12.2013. Based upon the final decree, execution was laid in E.P.No.55 of 2014. Pending execution proceedings, the revision petitioner herein as a third party to the suit has filed E.A.No.40 of 2015 under Order XXI, Rule 97 of Civil Procedure Code. The said application came to be dismissed on merits. Challenging the same, the revision petitioner has filed C.M.A.No.4 of 2022 before the Sub Court, Kuzhithurai and the same is pending.



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3. In the mean time, in order to be more cautious, the third party to the suit has filed the First Appeal before the Sub Court, Kuzhithurai with a delay of 5040 days. According to the averments in the affidavit in the condone delay application, the appellant had purchased the property from the two owners. The plaintiffs in the suit have lost title in the Oodukoor settlement proceedings and therefore, the suit itself is not maintainable. The revision petitioner has further contended that, his predecessor interest, namely, Boothalingam Pillai was granted patta for 87.916 cents of land under serial No.8 of Oodukoor settlement. The legal representatives of the said Boothalingam Pillai have sold a portion of property to one Fathuma and Mahaboob Nisha under a document, dated 28.09.1989. The said Fathuma and Mahaboob Nisha have sold an extent of 21.650 cents to one Suniram Jayachandran on 17.06.1996. The petitioner has purchased 18.635 cents from the said Suniram Jayachandran under two documents, dated 19.09.2001 and 27.09.2002 and has constructed a Hospital. Therefore, according to the learned Counsel appearing for the revision petitioner, the plaintiffs in the suit do not have any title and whatever title or right they got was erased by way



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of Oodukoor settlement. According to him, he has got merits to agitate in the appeal and therefore, the appeal ought to have been entertained by the Appellate Court.

4. The Appellate Court had dismissed the said condone delay application on the ground that, the appellant has not assigned any convincing reasons for condoning the extraordinary delay of 13 years. It has further found that the revision petitioner being a subsequent purchaser, he has no right to file any appeal. It has further found that the purchase of the petitioner is subject to the mortgage and now, the suit has been decreed and the mortgage has been redeemed. Challenging the said order, the present revision petition has been filed.

5. According to the learned Counsel appearing for the revision petitioner, the First Appellate Court has made certain observations on the merits of the appeal and has proceeded to dismiss the condone delay application. He has further contended that while dismissing the condone delay application, the First Appellate Court ought not to have made any



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observations or findings with regard to the merits of the appeal presented by the appellant.

6. Per contra, the learned Counsel appearing for the respondent herein had contended that the first attempt made by the present revision petitioner by filing an application under Order XXI, Rule 97 CPC., was unsuccessful and they have filed an appeal before the Sub Court, Kuzhithurai in C.M.A.No.4 of 2022 and the same is pending. Therefore, either the revision petitioner has to consider himself as a third party and pursue the remedy under Order XXI, Rule 97 CPC., or if he treats himself to be a representative of a party to the suit, he has to file an appeal. He cannot sail under both the boats. Hence, he had prayed for dismissal of the revision petition.

7. I have carefully considered the submissions made on either side and perused the materials available on record.



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8. A perusal of the order passed by the First Appellate Court in the condone delay application reveals that, the Court has arrived at a finding that the appellant has not given any convincing reason for condoning the extraordinary delay of 13 years. Of course, this Court does not find any reason to interfere in the order dismissing the condone delay application. However, the First Appellate Court ought not to have proceeded further in making certain observations / findings with regard to the merits of the appeal as well as the right of the revision petitioner herein.

9. In view of the above said facts, the order of the First Appellate Court in dismissing the condone delay application is hereby confirmed. However, the observations or the findings of the First Appellate Court would not stand in the way of the revision petitioner herein to contest C.M.A.No.4 of 2022, which is pending on the file of the Sub Court, Kuzhithurai. The learned Subordinate Judge, Kuzhithurai is directed to dispose of the said appeal on or before **31.01.2025** without being influenced by anyone of the observations made by this court or by the First Appellate Court while dismissing the condone delay application.



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10. With the said observation, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

10.07.2024

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

To

- 1.The Subordinate Judge,
Kuzhithurai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Senior Superintendent of Post Office,
Kanyakumari Division,
Nagercoil.
- 4.The Sub Post Master,
LSG Marthandam.

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R.VIJAYAKUMAR, J.

BTR

Order made in
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