



C.R.P(MD)No.2105 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2105 of 2017

and

C.M.P(MD)No.10466 of 2017 & 3069 of 2019

1.K.Durairaj (Died)

... Petitioner/Petitioner/
Appellant

2.Vijaya

3.D.Mala

4.D.Vinoth

... Petitioners

(Petitioners 2 to 4 are brought on record as Lrs of the deceased sole petitioner vide Court order, dated 03.06.2024 made in C.M.P(MD)Nos.2628, 2633 & 2634 of 2024)

Vs.

1.S.Ganesan

2.M.V.Raju

3.M.V.Paulsamy (Died)

... Respondents/Respondents/
Respondents

4.Muthuselvam

5.Gengammal



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6.Alageswari

... Respondents

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(R4 to R6 are brought on record as Lrs of deceased R3 vide Court order, dated 17.04.2018 made in C.M.P(MD)Nos.3455 & 3456 of 2018)

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order, dated 18.07.2017 made in I.A.No.8 of 2014 in un-numbered A.S.No.--- of 2014 on the file of the Subordinate Judge, Theni and allow the above civil revision petition.

For Petitioner : Mr.J.Anandkumar

For Respondents : No Appearance

ORDER

The present revision petition has been filed by the appellant in an unnumbered first appeal before the Sub Court, Theni challenging an order wherein the Court had dismissed an application to condone the delay of 656 days in filing a first appeal.

2. The 1st respondent herein had filed the aforesaid suit before the District Munsif Court, Theni for the relief of declaration of title and permanent injunction. The defendants were set *ex parte* and an *ex parte*



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decree came to be passed on 22.02.2012. Challenging the *ex parte* decree, the 3rd defendant in the suit had filed first appeal before the Sub Court, Theni with a delay of 656 days. The appellant had filed I.A.No.8 of 2014 to condone the said delay. After considering the submissions made on either side, the first appellate Court had dismissed the condone delay application. Challenging the same, the present revision petition has been filed.

3. According to the learned counsel appearing for the revision petitioner, based upon the *ex parte* decree in O.S.No.37 of 2011, the same plaintiff had filed O.S.No.123 of 2012 to delete the entry of sale deed in favour of the 3rd defendant. The said suit was contested by him and the suit was decreed. Later, a first appeal in A.S.No.38 of 2014 was filed by him and the same was also dismissed. Challenging the same, he had filed S.A(MD)No.759 of 2016 which is pending before this Court.

4. The learned counsel appearing for the revision petitioner had further contended that the vendor of the revision petitioner had filed O.S.No.253 of 2006 as against the father of the present plaintiff for the relief of permanent injunction. The said suit was decreed on 08.02.2008



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by the learned District Munsif, Theni. The said decree has attained finality. However, suppressing the said decree, the present suit has been filed by the plaintiff in O.S.No.37 of 2011.

5. The learned counsel for the revision petitioner has further contended that he was diligently prosecuting O.S.No.123 of 2012 and therefore, he could not file this first appeal in time. He was under the impression that, in the case O.S.No.123 of 2012 is dismissed, there would not be any necessity for him to challenge the decree in O.S.No.37 of 2011. He had further contended that since S.A(MD)No.759 of 2016 is pending which has arisen out of O.S.No.123 of 2012, the first appellate Court ought to have condoned the delay.

6. The learned counsel appearing for the revision petitioner had relied upon the judgment of the Hon'ble Supreme Court reported in **1998 (7) SCC 123 (N.Balakrishnan Vs. M.Krishnamurthy)** and contended that the first appeal being a statutory right, in the interest of justice, the delay should be condoned, unless there is gross negligence or deliberate inaction or lack of bonafide on the part of the appellant.



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7. Though the respondents have been served and they are represented through counsel, there was no representation on the side of the respondents on 11.07.2024. Therefore, it is posted under the caption “for orders” today. Even today, there is no representation on the side of the respondents. Hence, this Court is constrained to pass orders on merits after hearing the submissions of the learned counsel for the revision petitioner.

8. The second appeal arising out of connected suit is pending before this Court in S.A(MD)No.759 of 2016. The present revision petitioner has been diligently prosecuting that suit before the trial Court as well as the first appellate Court. Considering the fact that the first appeal has been filed challenging an *ex parte* decree, this Court is of the considered opinion that an opportunity could be granted to the present revision petitioner to contest the first appeal on merits in stead of dismissing the appeal on the ground of delay.

9. Considering the above said facts, the order in I.A.No.8 of 2014 on the file of Sub Court, Theni is hereby set aside and the delay is condoned. The first appellate Court is directed to number the first appeal



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and dispose of the same on merits and in accordance with law after giving due opportunity to all the parties.

10. With the said observations, this Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

15.07.2024

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

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To

1.The Subordinate Judge,
Theni.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Order made in
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