



C.R.P. (MD).No.2242 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)No.2242 of 2019

Mannar Thirumalai Naicker College,
Represented through its Secretary,
Colelge Campus, G.S.T.Road,
Pasumalai,
Madurai – 625 003.

... Petitioner/Petitioner/
Plaintiff

-vs-

1. Selvappan
2. N.Pavunraj
3. K.Selvam
4. C.Selvam
5.Murugan

... Respondents/Respondents/
Defendants

(5th Respondent is declared as major and the guardianship of his father Chinnasamy Naidu is discharged vide order of this Court, dated 13.06.2024 made in C.M.P(MD) Nos.7140 and 7141 of 2024 in C.R.P(MD) No.2242 of 2019)

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and executable order dated 10.01.2017, passed in I.A.No.123 of 2015 in O.S.No.67 of 1996, on the file of the learned Subordinate Judge, Periyakulam.



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For Petitioner : Mr.Babu Rajendran

For Respondents : Mr.M.S.Jeyakarthick – for R1 to R3

: Mr.P.Pitchimuthu – for R4 and R5

ORDER

The present Civil Revision Petition has been filed by the plaintiff in O.S.No.67 of 1996, on the file of the learned Subordinate Judge, Periyakulam, challenging the order, wherein, the trial Court has dismissed an application to condone the delay of 6196 days in filing an application to restore the suit.

2. The revision petitioner herein as plaintiff has filed the above said suit for the relief of declaration of title and permanent injunction. Pending suit, due to the non-appearance of the plaintiff, the suit was dismissed for default on 29.10.1998. The present application in I.A.No.123 of 2015 has been filed on 15.10.2015 to condone the delay of 6196 days in filing an application to restore the suit. The said application has been dismissed on merits. Challenging the same, the present Civil Revision Petition has been filed.



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3. According to the learned counsel appearing for the revision petitioner, due to the dispute within the Management of the College, the dismissal of suit for default was not brought to their notice. Only when they were attempting to put up construction in the suit schedule property, they received a notice from the defendants indicating the fact that they have succeeded in the patta proceedings as well as the suit in O.S.No.67 of 1996. Only thereafter, they came to know about the dismissal of the suit and they have filed the present application.

4. The trial Court, after considering the documents filed on the side of the respondents have rejected the contention of the plaintiff and has dismissed the application for condoning the delay.

5. The learned counsel appearing for the respondents relied upon the patta proceedings before the Revenue Divisional Officer, dated 22.10.2003. It was brought to the notice of the present plaintiff/ revision petitioner that when the suit has been dismissed for default on 29.10.1998, the order copy in the patta proceedings has also been served upon the College Management. In



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fact, the College has preferred an appeal as against the order of Revenue Divisional Officer. In such circumstances, the contention that they came to know about the dismissal of the suit only in the year 2015 is not believable.

6. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. There is a huge delay of 6196 days in filing an application to restore the suit which was dismissed for default on 29.10.1998. The only ground that is assigned by the plaintiff is that they were not aware of the dismissal of the suit until a legal notice was issued by the defendants in the year 2015, questioning the right to put up construction in the suit schedule property. The document Ex.R2, filed on the side of the defendants in the suit will clearly indicate that the dismissal of the suit on 29.10.1998 has been brought to the notice of the College Management in the patta proceedings before the Revenue Divisional Officer, Uthamapalayam, and the same has been recorded in the order dated 22.10.2003 and a copy has also been marked to the College Management. Therefore, it is clear that atleast in October 2003, the College Management was aware of the dismissal of suit for default. However, the



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present application has been filed only in October 2015 and legally no acceptable reasons have been assigned for such a huge delay and the trial Court was right in dismissing the application for condoning the delay and there are no merits in this Civil Revision Petition.

8. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

04.07.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Sub Court,
Periyakulam.



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R.VIJAYAKUMAR,J.

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