

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 02.12.2010
CORAM
THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN
C.R.P(MD)No.1491 of 2008

Sekar

.. Petitioner

Vs.

1.Soman Servai
2.Dinakaran
3.Soudarapandian
4.Krishnan
5.Jegathesan
6.Marikannu
7.Sundaram Ammal
8.Mathevan
9.Karuppalah
10.Sutharsanan

.. Respondents

(Respondents 1 to 3, 5, 7 to 9 stood
ex-parte before Trial Court)

Civil Revision Petition has been filed under Section 115 of
C.P.C., against the order dated 03.08.2005 passed in I.A.No.794 of 2003
in O.S.No.53 of 1999 by the Principal District Munsif Court, Sivagangai.

For Petitioner : M/s.Vijayakumari Natarajan

For Respondents R4 to R6 : No Appearance

ORDER

The Civil Revision Petition arises out of the dismissal of an
application to condone the delay in filing a petition for restoration.

2. Heard M/s.Vijayakumari Natarajan, learned counsel for the
petitioner. The respondents 1 to 3, 5 and 7 to 9 were set ex-parte. The
respondents 4 & 6 have alone have entered appearance. The petitioner has
filed affidavit of service in respect of the 10th respondent also.

3. The petitioner filed a suit in O.S.No.53 of 1999 on the file of
the District Munsif Court, Sivaganga praying for a decree of partition
and separate possession. The suit was originally decreed on 22.06.1990.
However on appeal in A.S.No.61 of 1992, the suit was remanded back to the
trial Court for a fresh disposal. After remand, the petitioner did not
appear and the suit was dismissed for non-prosecution on 17.11.1999.

4. In seeking restoration of the suit, there was a delay of 1336
days. The application filed by the petitioner in I.A.No.794 of 2003 for
condoning the said delay was dismissed by the trial Court forcing the
petitioner/plaintiff to come up with the above revision.

5. In the affidavit filed in support of the condone delay
petition, the petitioner has stated that he was afflicted by Paralytic

attack and that therefore there was a delay. The petitioner also examined himself as P.W.1 and deposed about his illness. The petitioner has also examined a third party as P.W.2. 9th defendant in the suit examined himself as R.W.1. He claimed that in pursuance of a complaint lodged, the petitioner was arrested by the police. To prove the same, the 9th defendant filed Exs.R1 to R3. On the basis of Exs.R1 to R3, the Court below dismissed the condone delay petition.

6. However, I am of the view that the delay deserved to be condoned. The petitioner filed the suit for partition wayback in the year 1984 in O.S.No.126 of 1984. It was transferred to the District Munsif Court, Manamsudurai and renumbered as O.S.No.55 of 1989 and the petitioner actually succeeded by getting a preliminary decree on 22.06.1990. In the first appeal A.S.No.61 of 1992, additional documents were filed and the matter was remanded back to the trial Court. Therefore, it cannot be said that the petitioner was not diligent in prosecuting the suit. After all the petitioner has claimed that he was afflicted by Paralysis. He also went to the witness box. Merely because there was a criminal case instituted against him and he was also arrested, there is no necessity to draw an inference that the illness pleaded by him was false. Considering the fact that the petitioner had diligently prosecuted the case from 1984 till 1999, the dismissal of the condone delay petition cannot be accepted.

7. In view of the above, this Civil Revision Petition is allowed, the impugned order is set aside and the application for condonation of delay filed by the petitioner shall stand allowed.

/True Copy/

Sd/-
Deputy Registrar (Accounts)

S. J. Palaniappan 21/11/11
Assistant Registrar (VR)

To

The Principal District Munsif,
Sivagangai.

Copy To:

The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 cc to Mr.S.Netarajan, Advocate, SR No.50052

C.R.P(MD)No.1491 of 2005

02.12.2010

pm
RJ/12.1.11
2p/4c