

(2014) 01 MAD CK 0122

In the Madras High Court

Case No : C.R.P. (NPD) No"s. 2568 and 2569 of 2013

Kumaresan, Jayamani and Jamini

APPELLANT

Vs

Sabasthiyan (deceased) (Thaniglass, Anthonisamy and Lurthuammal)

RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2014) 01 MAD CK 0122

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : P.R. Thiruneelakandan, for the Appellant; R. Veeramani, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—C.R.P. No. 2568/2013 has been filed challenging the order of the learned District Munsif-cum-Judicial Magistrate, Kattumannarkoil dated 17.08.2011 made in I.A. No. 124/2006 in O.S. No. 205/2004 on the file of the said judge. The said interlocutory application was filed by the revision petitioners, who are 3 in number, claiming them to be the legal representatives of Ramachandran (deceased), who figured as plaintiff No. 3 in the above said suit. The said interlocutory application was filed for condoning the delay of 709 days in filing an application to bring them on record as legal representatives of the deceased Ramachandran. C.R.P. No. 2569/2013 has been filed by the revision petitioners 1 to 3, who claimed to be the legal representatives of the deceased Ramachandran, who figured as plaintiff No. 3 in the above said suit against the order of the learned trial judge dated 17.08.2011 made in I.A. No. 125/2006 in O.S. No. 205/2004. The said interlocutory application had been filed for condoning the delay of 139 days in filing the application to restore the above said suit, which was dismissed for default on 5.10.2005.

2. The learned trial judge, after hearing, dismissed both the applications by

impugned orders dated 17.08.2011 made in I.A. Nos. 124/2006 and 125/2006 in O.S. No. 205/2004 respectively. The said orders are sought to be challenged in the present revision petitions.

3. O.S. No. 205/2004 came to be filed initially by one Utthiriga Mary and Yesu Mary, who figured as plaintiffs 1 and 2 against the respondents herein. Subsequently, Ramachandran was impleaded as Plaintiff No. 3 by virtue of an order dated 16.10.1992 on the premise that he had purchased one of the suit properties under sale deeds dated 09.05.1991 and 10.05.1991. The following were the reliefs prayed for in the plaint:--

- 1) the first item of the suit properties should be declared to be the absolute property of the plaintiffs;
- 2) the second and third items of the suit properties should be declared to be the absolute properties of the first plaintiff (Utthiriga Mary);
- 3) the defendants should be restrained by permanent injunction from interfering with the peaceful possession and enjoyment of the plaintiffs in respect of the suit properties; and
- 4) in case the court would come to the conclusion that the defendants had trespassed into the property they should be directed to hand over possession of the first item of the suit properties to the plaintiffs and the second and third items of the suit properties to the first plaintiff.

4. During the pendency of the suit, Utthiriga Mary, the first plaintiff was reported dead. But nothing has been mentioned in the affidavit filed in support of the above said applications filed by the revision petitioners as to whether Utthiriga Mary and Yesu Mary, who figured as plaintiffs 1 and 2, were alive or not. The revision petitioners had simply stated that their father had been impleaded as third plaintiff and he also died on 24.04.2003. It seems a restoration application came to be filed after the suit had abated and dismissed for default, without filing applications to set aside abatement and to condone the delay in filing the application to set aside abatement. On the other hand, such an application also came to be dismissed on 22.12.2004. Thereafter, the revision petitioners seem to have filed an application to restore the said application.

5. Under the said circumstances, the above said two applications I.A. Nos. 124 and 125 of 2006 came to be filed u/s 5 of the Limitation Act, the first one for condoning the delay of 709 days in filing the application to bring on record the legal representatives of deceased Ramachandran (third plaintiff) and the second one for condoning the delay of 139 days in filing the application for restoration of the suit, which was dismissed for default on 5.10.2009. In the applications, the revision petitioners had noted against the first respondent Sabasthiyan and the third respondent Anthonisamy that they were no more and no LR application was filed. None of the plaintiffs 1 and 2 or their legal representatives were shown as parties in the applications filed by the revision petitioners.

6. In the counter statement of the 2nd respondent it has been stated that an improper cause title had been provided showing the first and third respondents to have died, whereas both of them were alive. It was also stated therein that the cause title was defective since the second plaintiff Yesu Mary, who was alive, was not shown as a party. The learned trial judge, after hearing, held that no explanation had been offered for the delay and that the reasons assigned were not enough to show that the revision petitioners were prevented by a reasonable cause from approaching the court with necessary applications in time.

7. The learned counsel for the petitioners would submit that once the suit was decreed ex-parte, the defendants filed an application to set aside the ex-parte decree and that during the pendency of such application to set aside the ex-parte decree, Ramachandran/third plaintiff died on 24.4.2003. It is his further contention that after the death of Ramachandran, without impleading his legal heirs, the application to set aside the ex-parte decree was proceeded with and an order came to be passed on 21.5.2005. The above said contention will show that the application to set aside the ex parte decree was filed, while the third plaintiff Ramachandran was alive and notice was also given to him through his counsel. The application was the continuation of the suit and the revision petitioners, on the death of their father, could have very well come on record to resist the application, which they failed to do. Even otherwise, when the application was allowed and ex-parte decree was set aside, the petitioners could have very well challenged such an order setting aside the ex parte decree, which they failed to do. On the other hand, the plaintiffs allowed the suit to be dismissed for default on 5.10.2005 and thereafter, the petitioners came forward with the application for condonation of delay.

8. The consideration of the entire factual matrix will show that the father of the revision petitioners purchased one of the suit properties pendente lite. On the death of their father, during the pendency of the application to set aside the ex-parte decree, the petitioners did not come forward with an application to get them impleaded as legal heirs of the deceased third plaintiff Ramachandran. The other two plaintiffs also did not take effective steps to bring on record the legal heirs of the deceased third plaintiff. If at all they had died, steps could have been taken for bringing on record their legal heirs, which the plaintiffs in the case and the legal heirs in the case had omitted to do. The entire episode will show that the oblique found at the beginning continued till the end and the petitioners have been set up now to seek restoration of the suit on behalf of other two plaintiffs also.

9. After going through the records produced in the form of typed set of papers, the impugned orders, the grounds of revision in the light of the arguments of the learned counsel for the revision petitioner, this court is able to understand utter confusion has been created by the revision petitioners in preparing the pleadings in the applications in which the impugned orders came to be passed. There is absence of an averment as to what happened to Utthiriga Mary and Yesu Mary,

who figured as plaintiffs 1 and 2. Even after a counter statement was filed stating that the second plaintiff Yesu Mary was alive, nothing was done by the revision petitioners to correct the cause title or to refute the contention raised in the counter statement. Similarly, even after it was raised by the second respondent in the counter statement that the respondents 1 and 3 were alive and they were wrongly shown to have died, the revision petitioners did not take care to see that the cause title was corrected or the contention found in the counter statement was disputed.

10. The application filed as I.A. No. 124/2006 is found with an improper prayer. The law does not require an application for condoning the delay in filing LR petition to bring on record the legal representatives of the deceased party. It provides for the inescapable consequence of abatement of the suit insofar as such parties are concerned, if the steps for bringing on record the legal representatives of the deceased person, in the absence of any one of the legal representatives being already on record in any other capacity.

11. When a suit abates, the law provides for a further period of 60 days, within which time, an application to set aside the abatement can be filed. If no such application is filed within such time, then only the necessity of filing an application to condone the delay will arise. Such an application shall be for condoning the delay in filing the application to set aside abatement and not for condoning the delay in filing the LR application. In this case, I.A. No. 124/2006 has been filed for condoning the delay in filing the LR application. It will show that, no application to set aside abatement was filed.

12. Be that as it may, no acceptable explanation has been offered by the revision petitioners for the delay in approaching the trial court with the applications for condoning the delay in taking steps, pursuant to the death of the third plaintiff and in filing the application to restore the suit, which was dismissed for default. No effort was made by the revision petitioners to state what were the consequences of the death of the other parties to the suit and the absence of any steps taken for impleading the legal representatives of such parties. For a moment, this court itself was confused and it took a lot of time to go through the papers and understand the problem. Such a type of pleading, which is a glaring example as to how the same should not be done, has been made in this case by the revision petitioners. The net result shall be the inference that the revision petitioners wanted to trouble the water and fish out of it. In view of the same, this court comes to the conclusion that there is no defect or infirmity in the orders of the trial court dismissing the applications in I.A. Nos. 124 and 125 of 2006 in O.S. No. 205 of 2004, which are impugned in the present civil revision petitions. There is no merit in either of the civil revision petitions and the civil revision petitions deserve to be dismissed.

Accordingly, both the civil revision petitions are dismissed. However, there shall be no order as to cost.