
(2009) 03 MAD CK 0121

In the Madras High Court

Case No : C.R.P. (PD) No. 3667 of 2007 and M.P. No. 1 of 2007

Mohan Alagappan

APPELLANT

Vs

Rukmani Alagappan and Sekar Alagappan

RESPONDENT

Date of Decision : 04-03-2009

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2009) 03 MAD CK 0121

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : No appearance, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—Inveighing the order 28.8.2007 passed in I.A. 647 of 2007 in O.S. No. 384 of 1996 by the District Munsif, Madhuranthakam, this civil revision petition is focussed.

2. The epitome and summarisation of the relevant facts, which are absolutely necessary and germane for the disposal of this civil revision petition would run thus:

The revision petitioner/plaintiff filed the suit O.S. No. 384 of 1996 before the District Munsif, Maduranthakam, seeking the following reliefs:

- (i) to declare the plaintiff's title to the suit property;
- (ii) to direct the defendants to deliver possession of the suit property to the plaintiff;
- (iii) to direct the defendants to render true and proper accounts of the income derived from the suit property.

The defendants entered appearance and filed the written statement. Whereupon reply statement was filed. Subsequently, the suit was dismissed for default of the

plaintiff. However it was thereafter restored but the defendants did not appear. Whereupon ex-parte judgement and decree was passed on 3.9.2002, there at the defendants filed the I.A. No. 647 of 2007 u/s 5 of the Limitation Act to get the delay of 1648 days condoned in filing the application for setting aside the ex-parte decree. After hearing both sides, the lower Court condoned the delay. Being disconcerted and aggrieved by the order of the lower Court, the revision petitioner/plaintiff filed the revision on various grounds.

3. Despite printing the names concerned, none appeared.

4. A plain poring over and perusal of the relevant typed set of papers, including the copy of the order of the lower Court, would display and demonstrate, evince and expatiate that earlier the suit was dismissed for default on 10.9.2001 and it was restored presumably, after giving notice to the Advocate for the defendants, who appeared earlier. It is the contention of the defendants that their advocate did not inform them about such restoration of the suit and they came to know about it belatedly; whereupon the I.A. No. 647 of 2007 for getting the delay condoned was filed. Whereas the revision petitioner would gain say and remonstrate, refute and controvert the allegations of the defendants.

5. Before the lower Court, Exs.P1 to P5 were marked so as to prove and establish that the first defendant Rukmani Alagappan, being a Septuagenarian, was admitted in Devaki Hospital and taking pro-longed treatment. The lower Court was quite convinced of the ill health of D1. However, the plaintiff would contend that there is no explanation as to what happened to D2, who is the Power of Attorney of D1 and that he could have undertaken the needful.

6. Here one important fact should not be lost sight of. The main contention of the defendants in their joint affidavit, accompanying the I.A. was that their erstwhile advocate failed to inform them about the restoration of the suit and the lower Court also, on factual basis, accepted the same. There is no shred or shard, iota or miniscule extent of evidence to highlight and spotlight that in the application filed for restoring the suit by the plaintiff any notice was served on the defendants personally, as per the Code of Civil Procedure. No doubt, the defendants' erstwhile advocate, it appears, presumably took notice and there is no proof to show that the advocate actually communicated the defendants about the developments. Hence, the lower Court, purely on factual analysis, thought that one more opportunity should be given to the defendants, to contest the matter.

7. The lower Court considered the decisions cited before it on the side of the plaintiffs reported in 1992 L.W. 252 and held that the factual matrix involved in the cited case was different from the one involved in this case.

8. There is also one other important fact that the suit itself is one for declaration of title and recovery of possession of immovable property. I am fully aware of the fact that merits of the case should not be looked into while considering the application for getting the delay condoned, but seriousness of the case would

have its own bearing in taking a view in one way or other for condoning the delay.

9. It is a common or garden principle that for condoning the delay, the factual circumstance should be seen and it differs from case to case. In this connection my mind is redolent and reminiscent of the following decision of the Apex Court reported in R.B. Ramlingam Vs. R.B. Bhvaneswari, , which is squarely applicable to the facts of this case. An excerpt from it would run thus:

3. ... Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of Limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient case. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.

10. Here my discussion supra would exemplify and display that the defendants have not approached the Court with I.A. No. 647 of 2007 with false facts and the lower Court also was satisfied about the genuineness of the reasons cited by the defendabnts and in such a case the condonation of delay, in my opinion, is correct. The lower Court also awarded a cost of Rs. 3000/- (rupees three thousand) payable by the defendants to the plaintiff, so as to compensate the plaintiff. The records also would evidence that the defendants also deposited the cost of Rs. 3000/- in Court.

11. In the result, I could see no merit in the civil revision petition and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.