

(2013) 01 MAD CK 0071

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 2433 of 2012 and M.P. (MD) No. 1 of 2012

Murugan

APPELLANT

Vs

S. Mahendran and Others

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Limitation Act, 1963 — Section 14, 5

Citation : (2013) 01 MAD CK 0071

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : P. Prakash, for the Appellant; K.S. Sreenivasan, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—Heard both the sides. A resume of facts absolutely necessary for the disposal of this Civil Revision Petition would run thus:

The plaintiff filed the suit seeking the following reliefs:

a) To declare that the suit properties are the Private Family Trust Shenbagamoorthy Ayyanar Kovil Dharmam of which the plaintiffs and the fifth

defendant are the Hereditary Trustees;

b) In consequence of the grant of declaration, to grant a decree of permanent injunction restraining the defendants from in any way interfering with

the plaintiffs" and fifth defendant"s peaceful possession and enjoyment and carrying out of the Trust obligations in any manner;

c) If for any reason the Court finds that the plaintiffs are not able to establish possession to the satisfaction of the Court, alternatively grant a decree

directing the first defendant to hand over possession of the suit properties without any let or hindrance to the plaintiffs;

d) To decree that the defendants do pay the costs of the suit to the plaintiffs and
e) To grant such other and further reliefs as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

This case is having a chequered carrier of its own. Initially the suit was filed before the Subordinate Court, Madurai, which itself suo motu, on the

point of pecuniary jurisdiction, sent the case to the Munsif Court; whereupon both the sides appeared and D5-Alagar remained ex-parte at that

time itself. However, no written statement was filed on behalf of the defendants; whereupon, ex-parte decree was passed. Thereafter, the I.A. No.

269 of 2007 was filed u/s 5 of the Limitation Act to get the delay condoned in filing the I.A. under Order 9 Rule 31 of CPC get set aside the ex-

parte decree. However, the application u/s 5 of the Limitation Act was dismissed for default. Whereupon, D1 (P1) filed I.A. No. 1147 of 2008

for getting the I.A. No. 869 of 2007 restored and in that I.A., D3 and D4 were parties as P2 and P3. Subsequently, it transpired that even as on

the date of filing I.A. No. 1147 of 2008, D1(P1) was not alive. However the District Munsif allowed the I.A. No. 1147 of 2009 as against which

a revision was filed before this Court and that was dismissed. Thereafter, two unnumbered I.As, u/s 5 of the Limitation Act and under Order 9

Rule 13 of CPC were filed. Both the I.As. were not numbered and they were rejected without numbering, as against which the revision was filed

before this Court in C.R.P. (PD)(MD) Nos. 1690 of 2010 and 783 of 2011 and this Court vide order dated 25.04.2011, passed a common

order which would run thus:

7. In view of the order passed by this Court, I.As filed by the petitioner which were rejected by the trial Court stand allowed and consequently

I.A. No. 869 of 2007 stands restored and the third defendant is directed to file a written statement within two weeks from the date of payment of

cost as per this order. On such filing of the written statement the trial Court is directed to dispose of the suit within three months thereafter. Both

the parties are directed to cooperate with the trial Court.

Whereupon, the matter got revived before the Munsif Court, which subsequently expressed the view that the suit was not maintainable before that

Court on the point of pecuniary jurisdiction and returned the plaint granting 10

days time for re-presenting the plaint before the Sub-Court.

However, challenging the order, C.R.P. SR. No. 1690 of 2010 was filed by the plaintiffs but that was dismissed at the admission stage itself.

Thereafter, an application was filed before the Sub-Court by the plaintiffs for condoning the delay of 186 days in re-presenting the plaint before the

Sub-Court concerned. Ultimately, the Sub-Court passed the order condoning the delay by imposing cost and the plaint was numbered. Being

aggrieved by the procedure adopted by the Sub-Court in condoning such delay, the defendant No. 4 filed this revision airing his grievance.

2. The learned counsel for the revision petitioner / D4 would echo the heart-burns of his client to the effect that a copy of the docket order filed

along with the records would reveal that no doubt a few adjournments were given for filing counter but on 01.11.2012, without granting further

time for filing counter, simply allowed the application itself and there is no clarity in the order passed by the Lower Court.

3. The learned counsel for the revision petitioner / D4 would air the grievance of his client that no detailed order was passed and the Court itself

allowed I.A. No. 176 of 2012 even ignoring the actual number of days delay. In one breath, the plaintiffs would state that there was a delay of 6

months and 12 days which means that there was 192 days" delay in filing the application. In another breath, the plaintiffs would state that there was

186 days" delay and as such, the Court, without considering all these discrepancies, simply allowed the application.

4. The learned counsel for the respondents would submit that in view of the chequered carrier of this case, this Court itself vide order dated

25.04.2011 disposed of the matter. However, the Munsif Court suo motu entertained the pecuniary jurisdiction point and ordered the return of the

plaint whereupon there were certain errors occurred as above not due to any wilful negligence on the part of the plaintiffs. Considering all these

facts the Lower Court condoned the delay in re-presenting the plaint in the Sub-Court.

5. The point for consideration is as to whether in view of the singularly singular situation involved in this case and the chequered carrier of the case,

interference with the order condoning the delay in re-presenting the plaint by the plaintiffs before the Sub-Court is warranted or not?

6. No doubt, the law enjoins that whenever any order is passed by the Court, it should be supported by valid reasons. Here in this case, despite

adjournments given for filing counter, R4 did not file counter. However, the learned counsel for R4 would submit that further opportunity should

have been given by the Court but that was not given. As many as five adjournments were given at the instance of R4 for filing counter, but no

counter was filed. Over and above that, the very narration of facts supra by itself would display and demonstrate that as against the return of the

plaint, the plaintiffs preferred revision before this Court, but this Court, at the unnumbered stage itself, rejected the revision on the ground that only

C.M.A. would lie. Whereupon, instead of preferring C.M.A., the plaintiffs re-presented the plaint before the Sub-Court and hence application in

I.A. No. 176 of 2012 was filed for getting the delay condoned in re-presentation of the plaint, by calculating even the period taken by the plaintiffs

for approaching this Court in filing that Civil Revision Petition, which was dismissed at the unnumbered stage itself. In my opinion, as per Section

14 of the Limitation Act, 1963, even such period could be excluded from being calculated for re-presenting the plaint in the Sub-Court. But

unfortunately, it so happened that the Munsif Court felt that it had no pecuniary jurisdiction; thereafter, the plaintiffs resorted to re-present it in the

Sub-Court and ultimately the plaint was got numbered.

7. At this stage, if this Court interferes, then, my predecessor's earlier order dated 25.04.2011 would get virtually nullified which I do not want to

resort to. I am of the view that because of the nature of the suit, no interference with the order passed in condoning the delay is warranted.

However, a direction is given to the Lower Court to dispose of the suit as expeditiously as possible in the interest of justice preferably within a

period of six months from the date of receipt of a copy of this order. The Civil Revision Petition is disposed of accordingly. Consequently, the

connected miscellaneous petition is closed. No costs. On hearing the pronouncement of the order, the learned counsel for the fourth defendant

would pray for time to file written statement, for which the learned counsel for the plaintiff would submit that time limit may be fixed for filing such

written statement, otherwise the matter would get prolonged. I would like to grant time for D4 to file written statement on or before 31.01.2013.