
(2004) 04 MAD CK 0122

In the Madras High Court

Case No : Civil Revision Petition (NPD) No. 966 of 2002

Sridevan Nair

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 17-04-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 9, Order 26 Rule 9, 115, 80
Limitation Act, 1963 — Section 5

Citation : (2004) 04 MAD CK 0122

Hon'ble Judges : S. Sardar Zackria Hussain, J

Bench : Single Bench

Advocate : K.V. Subramanian, for the Appellant; S.Sathyamurthy, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Sardar Zackria Hussain, J.—The revision petitioner is the plaintiff in O.S.No.133 of 1996 on the file of the Principal District Munsif Court, Padmanabhapuram. The revision is filed against the order dated 5.4.2002 in I.A.No.573 of 2002 in O.S.No.133 of 1996.

2.The revision petitioner filed the suit O.S.No.54 of 1995 in Sub Court, Padmanabhapuram and subsequently it was transferred and renumbered as O.S.No.133 of 1996 in the Principal District Munsif Court, Padmanabhapuram against the respondent/State for declaration of his title and possession over the suit property and for permanent injunction that his possession should not be disturbed by the respondent and their men. The suit property is a portion of Mamkulam Poromboke comprised in Survey No.194/16 of Kalkulam village having extent of 1 Hectare and 19 Ares. In the plaint it is stated that the plaint schedule property old Survey No.2956/1A having an area of 4 Acres and 8 cents was a tank called "Mamkulam" and it was a poromboke land originally. The tank was on the South of channel. When the channel came into existence, the ryots purely depended upon the said channel for watering paddy fields and the

Mamkulam fell into disuse and the tank water began to silt and the entire Mamkulam tank became garden land and was not needed for irrigation purposes at all. One Narayanan put up an additional house in the tank bund and shifted his residence to that house. He occupied by trespass the whole suit property having an area of about 1 Acre at a stretch within the said tank and planted various trees including palmyrah, jack, mango, coconut, arecanut and other trees. His trespass was about the year 1925 and thereafter he was in adverse possession of the whole suit property. On his death, the suit property devolved upon his son Chidambaram Pillai, who also planted more trees. The then Tahsildar, Kalkulam also issued two notices to Chidambaram as residing in Vazhavilacheri on 27.2.1961 that he has trespassed in 5.805 cents and 18.165 cents of land in old Survey No.2556/1A, but actually Chidambaram was in adverse possession and enjoyment of the whole suit property. Chidambaram executed a settlement deed dated 22.7.1978 to his wife Neelamma settling the western 50 cents of the suit property and Chidambaram continued to be in eastern half which he surrendered to his son Rajendran. Rajendran transferred all his title and possession over the eastern half of the suit property to the plaintiff for valid consideration and orally surrendered eastern half on 25.11.1987. On 3.6.1992, Neelamma along with her daughter Sasikala sold the western half of the suit property to the plaintiff as per registered sale deed dated 3.6.1991. Therefore, after issuing notice u/s 80 C.P.C. on 9.4.1994, the suit O.S.No.54 of 1995 was filed in the Sub Court, Padmanabhapuram seeking the above reliefs. Along with the suit the plaintiff has filed I.A.No.196 of 1995 for the issue of a commission under Order 26 Rule 9 C.P.C. and also another petition.

3. It appears in the suit and also petitions, the State entered appearance through the Pleader doing Government Work and took time to file counter in the petitions till 22.8.1995. The advocate-commissioner appointed, visited the suit property on 14.10.1995 and the advocate-commissioner also filed report on 17.11.1995. In the mean time it appears, the suit was transferred and taken on file in the Principal District Munsif Court, Padmanabhapuram as O.S.No.133 of 1996 and posted for hearing on 25.3.1996. Time was granted till 4.6.1996 for filing written statement and then as a last chance it was adjourned to 11.9.1996 for filing written statement and since no written statement was filed by the respondent/State, ex parte decree was passed on 18.9.1996.

4. Therefore, the respondent/State on coming to know about the ex parte decree dated 18.9.1996 filed a petition on 18.1.2000 that they came to know about the ex parte decree only on 15.12.1999 on receipt of the suit notice dated 9.12.1999 from the plaintiff. In filing such petition, there have been delay of 1217 days and to condone the same I.A.No.573 of 2000 was filed. It is stated in the petition that the suit property exclusively belongs to the State, over which, the plaintiff has no manner of right which is a tank poromboke and that he is only a recent encroacher. Previously it was encroached by Rajendran and his mother Neelamma and the encroachment of the plaintiff was only in year 1987. It is further stated in the affidavit that the suit on transfer to the Principal District Munsif Court,

Padmanabhapuram renumbered as O.S.No.133 of 1996 and the Pleader Doing Government Work also entered appearance on behalf of the State, which was decreed ex parte for non filing of the written statement by the State. Since, the suit was originally filed in the Sub Court, Padmanabhapuram and then on the point of jurisdiction, transferred to the Principal District Munsif Court, Padmanabhapuram and since the Government cases were looked after by an Assistant of the Taluk Office and there were transfers and so the concerned Assistant was unable to know about the ex parte decree in the suit.

5.The petition was resisted in the counter, in which it is stated that the written statement is to be prepared by the Pleader doing Government Work, who is responsible for the same. In fact the plaintiff sent a petition on 20.6.1997 for issue of patta to the suit property stating all details about the suit and copy of notice was also sent to the Tahsildar, Kalkulam and to the Village Administrative Officer, Kalkulam.

6.The trial Court considering the evidence of P.W.1, Tahsildar of Kalkulam and that of the evidence of the plaintiff as R.W.1 and Exs.R-1 to R-10 marked on the side of the plaintiff passed conditional order directing to allow the petition on payment of cost of Rs.750/-. Such order is challenged by the plaintiff in this Civil Revision Petition.

7.Heard the learned counsel for the revision petitioner and the learned Special Government Pleader appearing for the State.

8.The learned counsel for the revision petitioner/plaintiff contended reiterating the stand taken in the counterfiled in I.A.No.573 of 2000 argued that no sufficient cause is shown to condone the delay of 1127 days in filing the petition to set aside the ex parte decree dated 18.9.1996. It is further pointed out that on 20.6.1997 the plaintiff gave a petition under Ex.R-3 to the Collector, Kanyakumari District and therefore, the State was aware of the fact that the suit was decreed ex parte on 18.9.1996 and as such, there is no satisfactory explanation in respect of the delay of 1127 days in filing the petition to set aside the ex parte decree.

9.The learned Special Government Pleader appearing for the respondent/State contended that inasmuch as the suit, which was originally filed in Sub Court, Padmanabhapuram, was transferred to the Principal District Munsif, Court, Padmanabhapuram, where it was pending for filing of written statement and since written statement was not filed in view of the fact, the Assistants, who were in-charge of the Government cases was subjected to transfers and as such, for non filing of written statement, the suit was decreed ex parte and such ex parte decree was not made known to the State and only on receipt of the suit notice under Ex.R-7 dated 9.12.1999, the ex parte decree was came to be known and so the State filed the petition to set aside the ex parte decree and in such circumstances, there have been delay of 1127 days in filing the said petition.

10.The learned Special Government Pleader appearing for the State/respondent

has also placed the following decisions:-

(1) N. Balakrishnan Vs. M. Krishnamurthy, . In that case, the Supreme Court has ruled at page 124:-

"Condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. The words "sufficient cause" u/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice"

(2) Ram Nath Sao alias Ram Nath Sahu and others - vs. - Gobardhan Sao & others reported in 2002(1) C.T.C. 769, in which the Apex Court ruled in paragraph 12:-

"... the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case."

11. In the notice Ex.R-3, it is only informed that the suit was transferred and taken on file in the Principal District Munsif Court, Padmanabhapuram in O.S.No.133 of 1996 and it is not set out in the said notice that the suit was decreed ex parte on 18.9.1996. Only in the notice Ex.R-7 dated 9.12.1999, it is stated clearly that the suit was decreed ex parte on 18.9.1996 and on coming to know of the said fact, the respondent/State filed the petition I.A.No.573 of 2000 subject matter of this revision to condone the delay of 1127 days in filing such petition to set aside the ex parte decree. It appears there is some truth in the case set out for the respondent/State that in view of the fact there were transfers of the Assistants in the Taluk Office concerned, who were in-charge of the Government cases and therefore, the ex parte decree passed in that suit was not made known to the State. Further, since the case was transferred from Sub Court, Padmanabhapuram to the Principal District Munsif Court,

Padmanabhapuram, after such transfer, the Pleader doing Government Work, who was newly appointed, also not informed the stage of the case, because of which the written statement could not be filed, resulting ex parte decree on 18.9.1996.

12. Admittedly, the suit property is Mamkulam tank poromboke, in which according to the plaintiff, a house was put up by one Narayanan and also the planted various trees including palmyrah, jack, mango, coconut, arecanut and other trees. On his death, the suit property devolved upon his son Chidambaram Pillai, who also planted more trees. Chidambaram executed a settlement deed dated 22.7.1978 to his wife Neelamma settling the western 50 cents of the suit property and Chidambaram continued to be in eastern half which he surrendered to his son Rajendran. Rajendran transferred all his title and possession over the eastern half of the suit property to the plaintiff for valid consideration and orally surrendered eastern half on 25.11.1987. On 3.6.1992, Neelamma along with her daughter Sasikala sold the western half of the suit property to the plaintiff as per registered sale deed dated 3.6.1991. According to the State, the encroachment by the plaintiff was only in 1987 and that B.M. case was also booked against him for the fasli 1397. In the cross-examination, R.W.1 also admitted that no hardship will be caused to him, if the ex parte decree is set aside and the suit is decided on merits. Therefore considering all these facts and with a view to give an opportunity to contest the suit itself by the State, the trial Court has suitably passed a conditional order to allow the petition I.A.No.573 of 2000 filed to condone the delay of 1127 days in filing the petition to set aside the ex parte decree dated 18.9.1996. The conditional order of trial Court allowing the petition on payment of cost does not call for any interference. However, the respondent/State is directed to file the written statement by August, 2004 and the Principal District Munsif, Padmanabhapuram is directed to dispose the suit itself by October, 2004 in accordance with law.

13. In the result, this Civil Revision Petition is dismissed confirming the order and decretal order dated 5.4.2002 made in I.A.No.573 of 2000 in O.S.No.133 of 1996. The respondent/State is directed to file written statement by August, 2004 and the Principal District Munsif, Padmanabhapuram is directed to dispose the suit itself by October, 2004 in accordance with law. No cost.