

(2000) 06 MAD CK 0063

In the Madras High Court

Case No : C.R.P. No. 2299 of 1999 and C.M.P. No's. 12920/99 and 4032 of 2000

The District Forest Officer, Kanyakumari District

APPELLANT

Vs

Muthusamy, Ponnayan, Swamidoss and Chellakannu

RESPONDENT

Date of Decision : 09-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 115

Constitution of India, 1950 — Article 226, 227

Limitation Act, 1963 — Section 5

Citation : (2000) 06 MAD CK 0063

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : Titus Jesudoss, Special Government Pleader Forests, for the Appellant; P. Ananthakrishnan Nair, for the Respondent

Final Decision : Dismissed

Judgement

K. Sampath, J.—The civil revision petition under Article 227 of the Constitution has been filed under the following circumstances: The respondents had filed a suit in O.S. No. 419/96 before the District Munsif's Court, Padmanabhapuram, against the petitioner herein for a permanent injunction restraining the petitioner and his subordinates from either trespassing into the respective plots of each of the respondents or from disturbing their peaceful enjoyment alleging as follows:

The suit property full of rocks and a waste land was encroached upon more than fifty years back by their ancestors and improvement had been effected by spending huge amount. They had also planted valuable trees, like rubber, jack, mango etc. Recognising their possession the Government had also booked land encroachment cases against them and realised prohibitory assessments, and fines from them. The respondents orally partitioned the suit property into five plots as per the rough plan attached to the plaint. Veerapuli Reserved Forest adjoins the plaint property. The employees of the Forest Department used to harass the respondent and their men and therefore they filed suits O.S. Nos.

126, 134, 318 and 320 of 1978 against the Government for declaration of their title and possession and for injunction in respect of the plots in their possession. The trial Court rejected the plaint for title, but granted a decree declaring their claim for possession and granted injunction. The Government preferred four appeals in A.S. Nos. 120, 130, 131 and 132 of 1981 before the Subordinate Judge's Court, Padmanabhapuram. The appeals were allowed in part setting aside the decree for injunction, but confirming the decree regarding the declaration of respondents' possession over the property. Even after the earlier decrees the employees of the Reserved Forest disturbed the peaceful enjoyment of the suit property on 3-1-1986 compelling the respondents to issue notices to the District Reserved Forest Officer, Nagercoil, on 7-1-1986 which provoked a reply on 30-1-1986 admitting the respondents' possession, but stating that the suit would be filed for recovery of the plaint schedule property. In spite of the reply notice the Reserved Forest Department people started disturbing the peaceful enjoyment of the property by the respondents and were making efforts to evict them by force. They had even measured the property on 23-8-1986. They had also threatened that they would demolish the respondent's houses. They were bound by the decree and judgment when the suits filed by the respondents. It was under those circumstances the suit came to be filed.

The revision petitioner filed his written statement denying the various averments in the plaint, in particular stating that mere booking of land encroachment cases would not confer any right or title over the property, that as per the Forest (Conservation) Act, no State Government or any other authority could assign any forest land to an individual without the sanction of the Central Government, that the judgment in A.S. Nos. 120, 130, 131 and 132 of 1981 would operate as res judicata, that it had been held in those cases that the respondents were not entitled to ask for any injunction as prayed for, that it had been held in the earlier suits that the State was the real owner of the property, that it was the sovereign discretion of the owner whether to assign the property to the trespassers or not, that the respondents could not continue to be in possession with the aid of the order passed in the earlier suits and that the State had got every right to evict the encroachers.

2. The suit was taken up for trial and posted on 16-4-1996 for cross-examination of plaintiffs/respondents' witnesses. There was no representation on behalf of the revision petitioner with the result he was set ex-parte and a decree for injunction was granted in favour of the respondents. After a delay of 78 days the revision petitioner filed an application under Order 9, Rule 13 of the CPC for setting aside the ex-parte decree along with an application u/s 5 of the Limitation Act. The application for condonation of delay I.A. No. 736/96 was dismissed by the lower Court on 20-11-1997 and against the order in which the present revision petition has been filed under Article 227 of the Constitution.

3. In the affidavit in support of the application for condonation of delay, it is stated that at the time the suit was being tried, one incharge officer was there

and thereafter, the Forest Officer was on leave and the deponent Forest Officer was not informed about the suit and he did not also know about the ex parte decree, that only on 1-7-1996 when the deponent had gone to the Munsif's Court in connection with O.S. No. 644/92, the decree obtained by the respondents in O.S. No. 419/86 as also the judgment were summoned from Court and produced and marked, he came to know about the passing of the ex parte decree, that the delay of 78 days was not on account of any wanton or wilful absence of the petitioner and that it was also not deliberate and therefore, the delay should be condoned.

4. The learned District Munsif, Padmanabhapuram, on a consideration of the rival contentions and also the materials furnished by the revision petitioner, dismissed the application observing that the delay had not been properly explained. It is against this the present revision petition has been filed under Article 227.

5. It should be pointed out at this stage itself that against the dismissal of an application u/s 5 of the Limitation Act only a revision u/s 115 of the CPC lies. As already noticed, the order of dismissal was passed on 20-11-1997. The present revision petition under Article 227 came to be filed on 28-7-1999. It would also be necessary to refer to the endorsements made in the order copy. The application for copy was made on 2-12-1997 and copy was received on 23-12-1997. If the respondents were to have filed a revision u/s 115, it should have been filed by March, 1998. The revision was not filed u/s 115 of the CPC for obvious reasons. After receiving the copy of the order, the revision petitioner had kept quiet for over 500 days and with a view to get over the limitation, the provisions of Article 227 have been invoked.

6. Mr. Titus Jesudoss, learned Special Government Pleader (Forests), concentrated more on the maintainability of the suit and submitted that the lower Court was in error in even entertaining the suit that the suit itself was not maintainable.

7. As regards the delay in attempting to get the ex parte decree set aside, absolutely no explanation was offered by the learned Special Government Pleader. Equally the learned Special Government Pleader was not able to explain as to why the revision was not filed u/s 115 and Article 227 of the Constitution was resorted to.

8. The learned Special Government Pleader very strongly relied on the judgment of the Supreme Court in *State of Haryana v. Chandra Mani and others* (AIR 1996 S.C.1623 = 1996-2-L.W. 18), wherein the Supreme Court had this to say:

"When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing on the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/

agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default, no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Government conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

9. In my very considered view, the decision cannot be applied to the advantage of the revision petitioner. When, according to the petitioner, the respondents were encroachers, the State should have been much more vigilant in protecting the interest of the State. The learned District Munsif found that absolutely no tangible or acceptable explanation was offered for not attending the Court on the date it was posted for cross-examination of respondents' witnesses, that the person who was in charge had not been examined, and that no particulars were given as to how and why such a situation arose. The State is protecting the interest of the citizens of the State. The mere fact that it is a State manned by impersonal machinery cannot be a ground for getting away with the irresponsible attitude adopted by the officers of the State. The incorrigible attitude is further heightened by the fact that even before this Court the revision petitioner has pursued the policy of indifference. As already pointed out, the learned Special Government Pleader for the revision petitioner was not able to give a satisfactory answer as to why the revision was not presented u/s 115 in time. There is a tendency in recent times to invoke the provisions of Article 227 more to by-pass the limitation provided for filing either appeal or revision under the relevant statute. It is high time such a tendency is discouraged. The State cannot claim any higher right than an ordinary citizen. In matters like this, the State should

have been more vigilant. It cannot call upon this Court to exercise the powers under Article 227 ignoring the laches and delay on its part. May be, the petitioner has a good case on merits. But, that does not give the petitioner any extra right over private individuals.

10. I do not want to express any view on the merits of the case as I am rejecting the revision petition on the ground of laches and delay on the part of the revision petitioner before this Court. This is apart from the fact that they could have properly explained the delay of 78 days in filing the application for setting aside the ex parte decree before the lower Court.

11. It has been held by the Supreme Court in *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, that "even a void order need not be set at naught if the party does not approach the Court within a reasonable time.

12. In *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, it has been held by the Supreme Court that, "the Court will almost always refuse to give relief under Article 226 if the delay is more than the statutory period of limitation."

13. To the same effect are the following decisions:

(i) *The VIth Income Tax Officer, City Circle II-A, Bangalore Vs. K.Y. Pillaiah and Sons*, and

(2) *Sales Tax Officer, Jodhpur and Another Vs. Shiv Ratan G. Mohatta*,).

It has already been referred to that the respondents had filed the present suit more to protect their possession on the basis of the decree in the earlier suits recognising their possession. If the petitioner has any remedy in law, it is always open to him to pursue the same. So far as the revision petition is concerned, the same is without merit and is dismissed. There will be no order as to costs. Consequently, the connected miscellaneous petitions C.M.P. Nos. 12920/99 and 4032/2000 are closed.