

Ramasamy Vs. Mariappan

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Court : Chennai Madurai

Decided On : Nov-30-2016

Judge : The Honourable Mrs. Justice J. Nisha Banu

Appeal No. : C.R.P. (MD) No. 147 of 2006

Appellant : Ramasamy

Respondent : Mariappan

Judgement :

(Prayer: The Civil Revision Petitions has been filed under Section 115 of the Civil Procedure Code against the order and decree passed in I.A.No.297/05 in O.S.No.105 of 1999 on the file of the District Munsif Court, Nilakottai.)

ORDER

1. This Civil Revision Petition has been filed against the order and decree passed in I.A.No.297/05 in O.S.No.105 of 1999 on the file of the District Munsif Court, Nilakottai.

2. The case of the petitioner is that the petitioner after obtaining preliminary decree in O.S.No.105 of 1999 on the file of the District Munsif Court, Nilakottai, had failed to file a petition for final decree within a period of three years from the date of such preliminary decree which resulted in dismissing the interlocutory petition. Challenging the legality of the same, the petitioner is before this Court.

3. The petitioner has averred that he has gone to Kerala to eke out his livelihood and therefore, there was a delay of 475 days in filing a petition for final decree, which is neither wilful nor wanton but bona fide reasons stated in the petition. In support of his contention, learned Counsel for the petitioner has relied on a judgment reported in 1976(1) MLJ 385, Sivan Pillai and Anbayyan and Others.

4. Per contra, learned Counsel for the respondent has stated that the reason adduced by the petitioner is not acceptable and each and every delay has not been explained properly by the petitioner. Hence, she prays for the dismissal of this Civil Revision Petition.

5. Considered the submissions made on either side and perused the material available on record.

6. It is not in dispute that the petitioner obtained preliminary decree on 27.02.2001 in O.S.No.105 of 2009 on the file of the District Munsif Court, Nilakottai. However, he has failed to file a petition for final decree, within a period of three years from the date of preliminary decree. In the petition, he has clearly stated that in order to make both ends meet, he had gone to Kerala and in that process, the delay had occurred in filing a petition for final decree. It is pertinent to point out that no prudent man will fail to file a petition for final decree, when a preliminary decree passed in favour of him. Presumably, the act of the petitioner is neither wilful nor wanton. Therefore, this Court is of the considered view that the delay caused in filing the petition for final decree can be condoned.

6.1. In this regard, though the petitioner has relied on a judgment of this Court reported in 1976(1) MLJ 385, Sivan Pillai and Anbayyan and Others, the said judgment may not be applicable to the case on hand for the reason that in the said case, a preliminary decree was passed and the Court has not fixed the outer time limit for the mortgagor to pay the amount in question and the Court's failure to do so cannot mean that the time begins to run from the date of the decree itself. If the Court failed to discharge its duty, the general principle is that, no litigant should suffer as a consequence of the failure of the Court or the mistake committed by the Court, but the case on hand, this Court has fixed the time limit that the petitioner should file a petition for final decree within three years from 27.02.2001.

However, he has failed to do so. Even otherwise, eschewing the citation relied upon by the learned Counsel for the petitioner as cited supra, this Court upon satisfying with the reasons adduced by the petitioner condones the delay in filing the execution petition. Consequently, the order impugned in this Civil Revision Petition stands set aside and this Civil Revision Petition stands allowed. No costs.

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