

Ramakrishnan Vs. Kaliyamoorthy

Ramakrishnan Vs. Kaliyamoorthy

SooperKanoon Citation : sooperkanoon.com/1190795

Court : Chennai

Decided On : Jun-03-2016

Judge : M.V. Muralidaran

Appeal No. : CRP (PD) No. 3119 of 2012 & M.P. No. 1 of 2012

Appellant : Ramakrishnan

Respondent : Kaliyamoorthy

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying against the fair and the decreetal orders dated 14.06.2011, passed in I.A.No.59 of 2009, in O.S.No.530/2004, on the file of the Principal District Munsif's Court, Villupuram.)

1. The instant Revision Petition has been filed aggrieved by the Order passed by the Principal District Munsif Court, Villupuram, in I.A.No.59 of 2009 in O.S.No.530 of 2004, whereby the Application seeking condonation of delay of 1414 days in filing the Petition to set aside the Ex-parte Decree in O.S.No.530 of 2004, has been allowed.
2. This Court has heard arguments advanced by Mrs.Meenal, learned counsel appearing for the Revision petitioner and no one appeared for the Respondent.

3. It is the contention of the Revision Petitioner that the Trial Court erred in allowing the Application filed by the Respondent seeking condonation of delay of 1414 days in filing the Application to set aside the Ex-parte decree passed against the Respondent. It has been strenuously contended that the Order of the Court below is vitiated by material irregularities and the Court has not considered the fact that sufficient cause has not been shown by the respondent for condoning the delay and also, the fact that the summons were duly served on the Respondent and the same were refused and the Respondent had knowledge of the Court proceedings has not properly considered by the Court below. It is also contended that the Trial Court ought to have noted that the Respondent did not state as to how he suddenly came to know the Ex-parte Order and in spite of Notice being served on him in the Execution Petition, the Respondent has not taken any steps thus, there is no justifiable reason for condoning the delay. It was also urged that the Court has omitted to see that the Respondent was not a bonafide purchaser for valuable consideration and he was colluding with the first Defendant owner to defeat the rights of the Petitioner in the property. It could be seen that the Respondent is a subsequent purchaser of the property from the original Defendant 1 and 2 in the suit.

4. Now, the issues that arises for consideration is whether the order passed by the Trial Court condoning the delay is liable to be interfered with or not?

5. The scope of condonation of delay under Section 5 of the Limitation Act has been elaborately considered in a long line of decisions of the Hon'ble Supreme Court in *Isha Bhattacharjee Vs. Managing Committee of Taghunathpur Nafar Academy* reported in (2013) 12 SCC 649 that: there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice .

6. The primary aspect that has to be looked into is whether the person who is making an Application seeking condonation of delay has adduced justifiable, valid and bonafide reasons and whether it is only due to the genuine inability of the Petitioner to approach the Court timely, the said Application could not be filed.

7. In the instant case, though the Application has been preferred after a delay of 1414 days, the reason adduced by the Respondent is that he is an uneducated agriculturist and he has purchased the land only for a valid consideration and he has no knowledge of the sale agreement or the Suit that has been filed by the Revision Petitioner and hence, he filed the petition of Condonation of delay in filing the Application to set aside the Ex-parte order immediately upon coming to know about the suit. The Court below has considered these factors and condoned the delay of 1414 days in filing the Application to set the Ex-parte order in O.S.No.530 of 2004 subject to the payment of Rs.1,750/- to the Revision Petitioner.

8. Though the Hon'ble Supreme Court has stated that there has to be a liberal approach adopted in the matters of condonation of delay and if there are bonofide reasons afforded by the parties, it has to be taken note that under the garb of being liberal, persons those who have allowed grass to grow under their feet by delaying inordinately before the Court cannot be permitted to be said as bonofide litigants. In the instant case, there is a delay of almost four years and the reasoning given by the Respondent is in the view of this Court, not satisfactory or justifiable. As it is trite in law that ignorance of law is not an excuse, here it is only the duty of the Respondent to be vigilant in pursuing the case.

9. These facts have not been considered at all by the Trial Court and the condone delay Application has been allowed. Hence, the order warrants interference and accordingly, the order passed by the Trial Court in I.A.No.59 of 2009 in O.S.No.530 of 2004 is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com