

St. Infant Jesus Theresa's Parish Church, Vs. S.Viagapp

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Court : Chennai

Decided On : Sep-09-2015

Judge : P.Devadass

Appellant : St. Infant Jesus Theresa's Parish Church,

Respondent : S.Viagapp

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 09.09.2015 CORAM THE HONOURABLE MR.JUSTICE P.DEVADASS C.R.P(NPD)NO.1069 of 2004 and C.R.P(NPD)(MD)No.505 of 2002 St. Infant Jesus Theresa's Parish Church, Kandavilai represented by the Parish Priest Kandavilaik, Eraniel Village Kandavilai Post, Kalkulam Taluk, Kanniyakumari District...Petitioner/Plaintiff/Petitioner in both cases .versus S.Viagappan ..Respondent/Defendant/Respondent in both cases PRAYER IN CRP(NPD)NO.1069 OF2004: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order in I.A.No.148 of 2002 in O.S.No.548 of 1995 initially before the Sub-ordinate Court, Padmanabhapuram, which was returned as not maintainable and thereafter the present revision is filed before this Court to revise the order of the Additional District Munsif Court, Eraniel.

PRAYER IN CRP(NPD)NO.505 OF2005: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order in I.A.No.107 of 2004 of 2004 in C.M.A(SR)No.643 of 2004, dated 19.10.2004 on the

file of the sub court, Padmanabapuram !For Petitioner : Mr.S.Annamalai in both cases for M/s.D.Rajagopal ^For Respondent : M/s.C.Godwin in both cases :COMMON

ORDER

These two Civil Revision Petitions are directed by the Plaintiff in O.S.No.548 of 1995 challenging the dismissal of I.A.No.148/02(C.R.P.No.1069 of 2004) which has been filed to condone the delay caused in filing the restoration Petition namely, I.A.No.149 of 2002(CRP.No.505 of 2005).2.The Plaintiff Infant Jesus Theresa's Parish Church situate in Kandavilai in Kanyakumari District filed the suit seeking declaration as to its title to the suit property, injunction and also for damages.

3.The Defendant, a member of the very same church filed written statement resisting the suit.

4.There was a hectic fight between the church and its member.

In that suit, injunction petition has been filed by the Plaintiff.

It was dismissed.

The Church gone to the Sub-Court, Padmanabhapuram preferring C.M.A.No.27 of 1993.

The Sub-Court granted injunction.

5.Aggrieved, the defendant filed C.R.P.No.3470 of 1998 in the Madras High Court.

In the pending C.R.P., he had also filed a C.M.P for reception of certain additional documents under order 41 Rule 27 of Civil Procedure Code.

Ultimately, that matter was over.

6.But there was some developments in the Trial Court.

The suit was listed for trial.

Since none appeared for the plaintiff and the defendant was present, the defendant had a easy walk over.

He has succeeded but without trial, because the suit was dismissed for default.

7.The Plaintiff was represented by Mr.George, Advocate belonging to Kanyakumari District.

Unfortunately, Mr.George passed away.

It so happened that Mr.George practiced along with Mr.Joseph William.

Naturally, they will be knowing each other.

When matters stood as such, Mr.Joseph William filed I.A.No.148 of 2002 to condone the delay caused in filing I.A.No.149 of 2002 to restore the suit.

Even death of Mr.George has become a big issue in I.A.No.148 of 2002.

It is stated by the defendant/respondent that Mr.George, died long ago.

Even while alive, Mr.George would not thought of that his death itself will become a issue in the very same Court in which he performed his professional duties.

8.Now, it is the submission of the learned counsel for the petitioner/plaintiff that because the death of their Advocate Mr.George was not brought to their knowledge and there was communication gap, the delay has occurred.

9.The learned counsel for the Petitioner submitted that the Courts can be liberal in these matters and advance the cause of justice.

In this connection, the learned counsel for the Petitioner cited the following decisions.

1.A.M.Subburathinam and another .versus Balaji ((2009) (7) MLJ196

2.Ragunathan .versus The Executive Engineer, Tamil Nadu Electricity Board, Kangayam and others (2015(2) MWN(Civil)595) 10.On the other hand, the learned counsel for the respondent/defendant contended that Mr.George died long ago.

Further, there is no satisfactory explanation for the delay.

The dismissal of the earlier C.R.P by the High Court is also known to the Plaintiff.

The learned counsel for the respondent submitted that some satisfactory explanation has to be given as to why the delay had happened, only in such cases, the discretion vested on the Court could be exercised.

In this connection, the learned counsel for the respondent cited the following decisions: 1.P.K.Ramachandran .versus State of Kerala and another(AIR1998S.C2276 2.B.Madhurai Goud .versus B.Damodar Reddy((2012) (12) SCC693 3.Basawaraj and another .versus The Special Land Acquisition Officer(2013- (5)-L.W.219) 4.G.M.G.Engineering Industries and others .versus Issa Geen Power Solution and others (2015(2) MWN (Civil) 684) 11.I have anxiously considered the rival submissions, perused the materials on record and also the decisions cited.

12.Section 5 Limitation Act has been brought into existence in order to give finality to matteRs.otherwise till their life-time parties will fight.

In order to give finality to judicial proceedings, certain period has been prescribed under the Limitation Act.

Though a right may be there, but by way of a provision in the Limitation Act their enforceability is barred.

However, upon showing sufficient cause,the delay can be condoned under Section 5 of the Limitation Act.

13.Thus the phrase "sufficient cause" has been interpreted by courts in different way under different circumstances and under different times.

Earlier the Courts expertise in giving explanation for each day of delay.

Later, it was realised that if really the parties have some cause or case, let those cases should not be decided on technical grounds and Courts condones the delay under Section 5 of the Limitation Act.

But the courts are cautious that no licence or chance be given to waste the Court's time by encouraging court birds or promotion of vexatious litigations, hopeless cases.

14. The delay should not be allowed to defeat justice.

Naturally, one party to a suit, if he gets success even without undergoing the ordeal of trial, he will be happy.

But that is not the aim of the law.

15. Now in this case, Infant Jesus Church in Iraniel seeks declaration as to its title to the suit property.

It is a suit on title.

The defendant is also a member of the same church.

He resists the suit by filing written statement, raising a plea as to a strip of disputed land.

It is a property dispute.

Let us not go into the death of Advocate Mr. George.

Let his soul rest in peace.

Any how Advocate Mr. Joseph William took up the brief.

The church has entrusted the brief to him.

He has filed the two I.As.

The Court has to see any substance involved in the suit to exercise its judicial discretion under Section 5 of the Limitation Act.

Liberal exercise of power does not mean arbitrary exercise of discretion.

16. I see sufficient cause to give an opportunity to the plaintiff to put forth its case.

The defendant also will place his case and the case be decided on merits.

17.Of course, by this time, the defendant has been put to some prejudice and that can be compensated by way of costs.

18.Mr.S.C.Godwin, the learned counsel for the respondent/defendant submits that the defendant is not interested in getting cost from his church, he will face the case of the church on merits in the Trial Court.

This gesture of the defendant/respondent is required to be appreciated.

Since we have decided to condone the delay, the impugned order passed in I.A.No.148 of 2002 must go, consequently the order of dismissal passed in I.A.No.149 of 2002 must also go.

19.In view of our above deliberations, it is ordered as under: (1)The fair order and decretal orders passed by the learned District Munsif, Iraniel in I.A.Nos.148 and 149 of 2002 are set aside.

(2)The said I.As stand allowed.

(3)The suit in O.S.No.548 of 1995 shall be restored to file,since it is an oldest suit.

(4)The learned District Munsif, Iraniel is directed to dispose of the suit within four months from the date of receipt of a copy of this order.

20.With the above directions, these Civil Revision Petitions are disposed of.

No costs.

To 1.The District Judge, Kanyakumari District at Nagercoil.

2.The Additional District Munsif, Eraniel, Kanyakumari District.

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