



C.R.P(NPD).No.39 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 26.10.2021

CORAM:

**THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI**

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Thirumalaisamy ... Petitioner  
Versus

1.Saraswathi  
W/o.Ponradhakrishnan  
Ponradhakrishnan (died)

2.Rajagopal ... Respondents  
3.Ravichandran

**PRAYER:** Civil Revision Petition filed under Section 115 of CPC, praying to set aside the fair and final order passed in I.A.No.2011 of 2013 in I.A.No.759 of 2009 in O.S.No.407 of 2004, on the file of the District Munsif Court, Udumalpet, dated 23.11.2018.

For Petitioner : Mr.B.Kumarasamy

For Respondents : M/s.Swaraj Associates

**ORDER**

This Civil Revision Petition is filed to set aside the fair and final order passed in I.A.No.2011 of 2013 in I.A.No.759 of 2009 in O.S.No.407 of 2004, on the file of the District Munsif Court, Udumalpet, dated 23.11.2018.



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2. The revision petitioner herein is the plaintiff in the suit in O.S.No.407 of 2014 on the file of the District Munsif Court, Udumalpet, which has been filed for the relief of permanent injunction and other consequential relief against the respondents/defendants. The said suit was dismissed for default due to his absence on 11.11.2008. Thereafter, he filed a restoration application in I.A.No.759 of 2009, which was allowed on payment of cost of Rs.300/- by order dated 22.06.2010. Since the plaintiff has not paid the said cost, the petition was dismissed on 07.07.2010. Subsequently, he filed an application in I.A.No.2011 of 2013 under Section 5 of the Limitation Act to condone the delay of 1114 days. The said application was strongly objected by the defendants. On hearing both side, the trial Judge dismissed the said application. Aggrieved by that, the plaintiff has filed this revision.

3. At the time of the arguments, the learned counsel appearing for the revision petitioner submits that since the plaintiff was taking treatment in Kerala for Jaundice, he was not able to pay the cost. Hence, he prays to condone the delay. It is his further contention that if an opportunity is given,



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the plaintiff will establish his case before the trial Court. But the learned WEB COUNSEL for the respondents/defendants strongly objected the application by pointing out that the reason for the delay was not specifically stated by the plaintiff which is a main ingredient to invoke Section 5 of the Limitation Act.

4. The trial Judge rightly appreciated the fact that the petitioner has not produced any proof for his illness. Furthermore, though as per the contention of the revision petitioner, he was unwell upto March 2013 but during the month of February 2013, he attended the enquiry which was conducted by the Land Grabbing Police at Tiruppur along with his defendants. During that enquiry, the defendants established their title based upon a sale deed relating to the suit property and also informed the authorities that the suit was dismissed for default, thereby he contended that the plaintiff was very well aware about the purchase made by the defendants as well the suit which was dismissed for default.

5. Those facts clearly reveal that the plaintiff is having knowledge about the dismissal of the suit but he has not taken any steps immediately to restore the same for the reasons best known to him.



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Moreover, based upon the purchase, the defendants contended that they are in possession of the property. On the other hand, the plaintiff contended that he is in enjoyment of the property. To prove his right and title, the plaintiff has to approach the right forum. But in this case, he failed to disclose the sufficient reason for condoning the delay, which was rightly appreciated by the trial Court which calls for no interference by this Court.

6. Hence, the order passed by the trial Judge is confirmed. Accordingly, this Civil Revision Petition is dismissed on merits. Consequently connected Miscellaneous Petition is Closed. No costs.

26.10.2021

Internet : Yes / No

Index : Yes / No

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To  
The District Munsif Court, Udumalpet.



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**T.V.THAMILSELVI, J.**

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