

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga.**, B.A., B.L.,

District Munsif, Sulur

Friday the 12th day of July 2024

I.A.No.3/2022

in

O.S.No.111/2018

1. R.Subbaian (Died)

2. Sundaresan

3. Saroja

4. Sumathi

5. Jayanthi

(Amended as per order in IA.No.12/2023 dated 05.12.2023) ...Petitioners/Plaintiffs

/VS/

1. Nadarajan

2. Thulasiyammal

3. Ramathal (Died)

...Respondents/Defendants

4. Gopalasamy

5. Geetha

(Amended as per order in IA.No.9/2023 dated 04.08.2023)

...Respondents/ Proposed parties

This petition coming on 24.06.2024 for final hearing before me in the presence of Thiru.M.Jayanthinathan, Advocate for the Petitioners and of Tmt.D.Chitra, Advocate for the Respondents and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

This petition is filed under section 5 of limitation Act to condone the delay of 1317 days in filing the set aside petition.

1. The brief averments of the amended petition/affidavit filed by the petitioners as follows:

1.1. The case was posted on 17.01.2021 for orders in IA.No.2/2021. On that day this court was ordered the petitioner to pay the cost of Rs.500/- to the legal aid on or before 07.01.2022. Unfortunately from 03.01.2022 the entire courts was shifted to online mode and the advocates and litigants also not permitted into court campus till 07.02.2022.

1.2. Again the case was posted on 07.02.2022 for production the receipt further posted on 08.02.2022. On that day the IA was dismissed for non production of receipt. Because of the courts closed the petitioner could not follow their counsel to do the needful things on time. It is came to the knowledge of petitioner about the orders of this court on 10.02.2022 only. Hence, the 1st petitioner filed this petition to restore the IA.No.2/2021 on the file.

1.3. During the pendency of the petition the 1st petitioner was died hence, the legal heirs of him were impleaded as 2nd to 5th petitioners. Hence, the petition.

2. The brief averments of Counter filed by the 1st Respondent and adopted by 2nd, 4th and 5th Respondents as follows:

2.1. The petition is false, frivolous, vexatious and unsustainable in law and on facts. The main suit was dismissed for default on 12.11.2018. The IA.No.2/2021 is taken hearing after the limitation petition is allowed. In IA.No.2/2021 this court order to cost of Rs.500/- paid to the legal aid on or before 07.02.2022. But the petitioners not comply the order and absent on 07.02.2022. On 08.02.2022 the petitioners not present and the said petition was dismissed.

2.2. The suit is dismissed for default on 12.011.2018 and the petition filed for restore the suit also dismissed on 08.02.2022. Hence, this petition is to be dismissed.

3. Points for Consideration:-

Whether the petition under section 5 of the Limitation Act an order to condone

the delay is to be allowed?

4. Points:-

4.1. Heard both sides. Perused the records. On perusal of records the main suit is filed by the plaintiff for declaration and permanent injunction. The main suit was dismissed for default on 12.11.2018 and the plaintiff filed petition under order 9 rule 9 of CPC to restore the suit in IA.No.2/2021. The said IA was dismissed on 08.02.2022 for cost of Rs.500/- not paid by the petitioner to the legal aid. On 21.06.2022 the petitioner filed petitions under section 5 of Limitation act and order 9 rule 9 of CPC to condone the delay of 1317 days and restore the suit.

4.2. The main suit is filed for declaration and permanent injunction, it must be concluded on merits by adducing both side oral and documentary evidences. Further on perusal of documents the plaintiff had paid cost for IA.No.2/2021 and submitted memo before this court on 24.06.2024. Hence in the interest of justice to determine the issue between plaintiff and defendant finally on merits there has been a chance must be given to contest the case to both side. Hence in the interest of justice this petition will be allowed.

In the result this petition is allowed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 12th day of July 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on petitioners side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order

I.A.No.3/2022

O.S.No.111/2018

Dated:12.07.2024

DMC, Sulur