

IN THE COURT OF THE DISTRICT MUNSIF, SULURPresent : **Tmt.N.Renuga., B.A., B.L.,**

District Munsif, Sulur

Monday the 14th day of August 2023**I.A.No.1/2022****in****O.S.No.383/2017**

Senthil Kumar

...Petitioner/Plaintiff

/VS/

1. Velliammal (Died)
2. Padmavathy
3. Sathya priya
4. Senthilkumar
5. Palanisamy
6. Vasanthamani
7. Danalakshmi (Died)
8. Parameshwari
9. Palanisamy
10. Manickam
11. Dharani
12. Karthikeyan

...Respondents/defendants

This petition coming on 26.06.2023 for final hearing before me in the presence of Smt.R.Sree Chithra Devi, Advocate for the Petitioner/plaintiff and Thiru.D.Sampath, Advocate for the 2nd to 5th Respondents and Thiru.S.Kannan, Advocate for the 9th Respondent and Thiru.V.Raveendran, Advocate for the 6th , 8th and 10th to 12th Respondents and the 8th respondent called absent set exparte and upon perusing the records, and this court made the following:

ORDERS

This petition is filed under order 9 rule 9 and section 151 of CPC to restore the suit which was dismissed for default on 11.09.2017.

1. The brief averments of the affidavit filed by the petitioner as follows:

1.1. The petitioner/plaintiff have filed the suit before the Hon'ble District Munsif Court, Palladam, after the District bifurcation the suit was transferred to Coimbatore District Munsif Court and from the Coimbatore District Munsif Court the

suit was again transferred to this Hon'ble court and renumbered as OS.No.383/2017 pending disposal of the suit this Hon'ble court was to dismiss the suit for default on 11.09.2014 as the petitioner/plaintiff failed to proceed with trial.

1.2. The petitioner not aware about the transfer of the suit to this Hon'ble court as the petitioner was in the knowledge of suit pending before Coimbatore District Munsif Court. Because of the petitioner's ill health he was not able to contact his counsel and learn about the position of the case. The petitioner contacted his counsel in the month of November 2022 through his counsel the petitioner came to know that the suit was already dismissed for default on 11.09.2017 itself for not proceeding with trial, immediately the petitioner requested his counsel to take necessary steps to restore the suit but the counsel informed the petitioner that court's are not entertaining litigations due to corona pandemic for past two years. So the petitioner requested his counsel to file the restoration petition at earliest. Hence the petitioner now filing this restoration petition.

2. The brief averments of Counter filed by the 4th Respondent and adopted by the 2nd, 3rd and 5th Respondents as follows:

2.1. The petition is false, frivolous, vexatious and unsustainable in law and on facts. The petition to condone delay in filing of restoration of the suit is concerned, the petitioner is bound to explain each and every day delay and should not be any casual approach for filing the petition and deciding the petition.

2.2. The reason quoted for condone the delay of 1745 days for filing restore petition is not a bonafide one. The petitioner has not produced any document in the support of petitioner's affidavit. As per law the petition is bound to explain each and every day delay and the reason quoted by the petitioner for delay is not genuine, hence there is no merit in the petition. The petitioner is not coming forward with clean hands.

2.3. The explanation for delay, should be genuine and acceptable. As far as the

delay, under section 5 of Limitation Act is concerned, the law is strict and adherence of the Principles of law in the matter. As per as the present petition is concern he failure to prosecute the case diligently and suit was dismissed for default on 11.09.2017. Now the petitioner after diligently prosecute the case, the petitioner filed the present petition to condone the delay of 1745 days to restore the suit.

2.4. Hence after laps of delay of 1745 days the petitioner can't maintain the application to restore the above suit. Hence the delay in filing present application namely 1745 days to restore the suit is not convincing reason for excusing the delay. Hence the petition is dismissed to liminee.

3. Points for Consideration:-

Whether the petition under order 9 rule 9 and section 151 of CPC is to be allowed?

4. Points:-

4.1. Heard both sides. Perused the records. The main suit is filed in the year 2007 before District Munsif Court, Palladam for the relief of partition in OS.No.370/2007. During the pendency of the suit due to bifurcation of Tirupur District from Coimbatore, the case is transferred on the ground territorial jurisdiction to District Munsif Court, Coimbatore and renumbered as OS.No.888/2013. Further the case was transferred to Sulur District Munsif Court on the ground of constitution of new court for Sulur Taluk and renumbered as OS.No.383/2017.

4.2. On perusal of records the case is posted for trial on 26.07.2017 and on 11.09.2017. On the said date the plaintiff has not turn for proceed with trial. Hence the suit is dismissed for default on 11.09.2017. After that the plaintiff has filed this petition to restore the main suit with delay of 1745 days in filing the restoration application.

4.3. On perusal of the affidavit attached to this petition, the petitioner stated that due to his ill health he unable to contact his counsel and learn about the position of the case. Further in the month of July 2017 the defendant approached and

requested to settle the dispute amicably. Believing their words the plaintiff waited for some time, after learning the defendant delaying the case, the plaintiff approached his counsel in the month of November 2022, the counsel of the plaintiff informed that on 11.09.2017 the case has been dismissed for default. Immediately the petitioner requested for take necessary steps to restore the main suit. But his counsel informed that due to corona pandemic, they are not entering in to the court campus for past two years and now filed this application to restore the main suit.

4.4. The petitioner has not filed any documentary evidences to show his illness and where he took treatment, from when he took treatment. The delay in filing this application is about 5 years in numbers 1745 days. The each day delay should be explained properly. The plaintiff has not shows his reason for each day delay with material particulars. Hence, the petitioner has not proved the delay neither wanton nor willfully. The main suit is filed for partition, it must be concluded on merits by adducing both side oral and documentary evidences. Originally to file a partition suit there has been no limitation. Hence in the interest of justice to determine the issue between plaintiff and defendants 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 on payment of cost.

In the result, this petition is to be allowed on payment of cost of Rs.1000/- each to be paid by the Petitioner/Plaintiff to each the 2nd to 5th Respondents/ 2nd to 5th Defendants, 9th Respondent/ 9th Defendant and 6th,10th to 12th Respondents/ 6th, 10th to 12th Defendants through their counsel who appeared separately on or before 28.08.2023. On failure this petition stands dismissed automatically. For compliance Call on 28.08.2023.

Dictated to the Steno typist and directly typed by her in computer, corrected and pronounced by me in open court this the 14th day of August 2023.

District Munsif,
Sulur.

List of witnesses and documents on petitioner side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

District Munsif,
Sulur.28.08.2023

This petition coming on this day for final hearing before me in the presence of Smt.R.Sree Chithra Devi, Advocate for the Petitioner/plaintiff and Thiru.D.Sampath, Advocate for the 2nd to 5th Respondents and Thiru.S.Kannan, Advocate for the 9th Respondent and Thiru.V.Raveendran, Advocate for the 6th , 8th and 10th to 12th Respondents and the 8th respondent called absent set exparte and upon perusing the records, and this court made the following:

ORDER

Cost received by R6, 10,11,12 respondents. Cost no received by R2 to R5, R9 respondents. Hence at request the lodgment challen issued to deposit the cost into court account on or before 13.09.2023.

Pronounced by me in open court this the 28th day of August 2023.

District Munsif,
Sulur.13.09.2023

This petition coming on this day for final hearing before me in the presence of Smt.R.Sree Chithra Devi, Advocate for the Petitioner/plaintiff and Thiru.D.Sampath, Advocate for the 2nd to 5th Respondents and Thiru.S.Kannan, Advocate for the 9th Respondent and Thiru.V.Raveendran, Advocate for the 6th , 8th and 10th to 12th Respondents and the 8th respondent called absent set exparte and upon perusing the

records, and this court made the following:

ORDER

Cost of Rs.1000/- each R2 to R5 and R9 lodgment chellen issued. Payment call on 19.9.2023.

Pronounced by me in open court this the 13th day of September 2023.

District Munsif,
Sulur.

19.09.2023

This petition coming on this day for final hearing before me in the presence of Smt.R.Sree Chithra Devi, Advocate for the Petitioner/plaintiff and Thiru.D.Sampath, Advocate for the 2nd to 5th Respondents and Thiru.S.Kannan, Advocate for the 9th Respondent and Thiru.V.Raveendran, Advocate for the 6th , 8th and 10th to 12th Respondents and the 8th respondent called absent set exparte and upon perusing the records, and this court made the following:

ORDER

Cost Paid by the petitioner counsel. This court deposit in Bank through E-challen State Bank of India Account No.20230913018880 sum of Rs.1000/- (Rupees One Thousand only) dated 14.09.2023. Hence this petition is allowed.

Pronounced by me in open court this the 19th day of September 2023.

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.1/2022 in
O.S.No.383/2017
Dated:19.09.2023
DMC, Sulur