

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2015

C O R A M

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

C.M.A.No.2245 of 2015

S.P.Singaravel

... Appellant/Plaintiff

Vs

S.Sengottuvel

.. Respondent/Defendant

Civil Miscellaneous Appeal against the decree and order dated 24.4.2015 passed by the learned Principal District Judge, Namakkal in I.A.No.425 of 2014 in O.S.No.12 of 2012.

For appellant : Mr.S.Ravi

J U D G M E N T

The Civil Miscellaneous Appeal is filed as against the dismissal of the second petition filed by the appellant/plaintiff for restoration of the suit.

2. The learned counsel for the appellant would contend that the Court below has not given any reasons for dismissing the petition filed by him under Order 9 Rule 9 and Section 151 of CPC. According to the learned counsel, though the appellant satisfies the Court below that there was sufficient cause for his non appearance when the suit was called for hearing, the Court below rejected the same only on the ground that it is a second petition, which is not correct.

3. Heard the learned counsel for the appellant and perused the materials available on record.

4. On a careful perusal of the order passed by the Court below, it is clear that the present petition is a second petition filed by the appellant for restoration of the suit. Earlier, the appellant has filed a petition under Order 9 Rule 9 of CPC and the same was allowed on payment of cost of Rs.2,000/-i.e Rs.1,000 to the legal aid and Rs.1,000/- to the respondent herein. Thereafter, on five occasions, the case was adjourned but he did not even file proof affidavit. On 6th occasion the case was dismissed for default. Again the present petition

has been filed seeking for restoration. A detailed counter affidavit has been filed by the respondent and arguments of both sides were heard by the Court below in the present petition. The Court below, after scrutinising the counter affidavit and after hearing the arguments of both sides, has rightly dismissed the petition for default.

5. It appears that though sufficient opportunity has been given to the appellant/ plaintiff, he has not chosen to pursue his case. The appellant/ plaintiff has not even filed a proof affidavit along with the petition for restoration. Therefore, it is clear that in order to drag on the proceedings in the case of the alleged oral sale agreement, the appellant/plaintiff has filed the petition after petition. Hence, I do not find any reasons to interfere with the order of the Court below.

The Civil Miscellaneous Appeal is dismissed. No costs.

Ga

Sd/-
Assistant Registrar (IV)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Judge,
Namakkal.

+1 C.C. To MR.M.Anandaraj, Advocate in SR.NO.56457
+1cc to M/S.Gupta and Ravi, Advocate SR.54657[26/11/2015]

सत्यमेव जयते

C.M.A.No.2245 of 2015

SAI (CO)

sd : 03/11/2015

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