

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.03.2015

Coram:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD)No.1224 of 2015
and M.P.No.1 of 2015

1.Rajathi
2.Gandhimathi
3.Karthiga

... Petitioners

vs.

1.Muniammal
2.Baghiyavathi
3.Kasthuri
4.Pachaiammal
5.Aridass
6.Guna
7.Minor Kabilan
8.Dhanalakshmi

... Respondents

Civil Revision petition filed under Article 227 of the Constitution of India to set aside the fair and final order passed in I.A.No.1591 of 2013 in O.S.No.408 of 1999 dated 07.01.2014 on the file of Additional District Munsif Court at Gingee.

For Petitioners : Mr.B.Jawahar

ORDER

This revision is directed against the order passed by the Additional District Munsif, Gingee, in I.A.No.1591 of 2013 in O.S.No.408 of 1999.

2. The petitioners are the legal heirs of the third defendant, namely Kasi Gounder. The respondents 1 to 4 along with one Poongavanam Ammal had instituted a suit against the defendants for declaration of title and for permanent injunction. The suit was dismissed for non-prosecution. The plaintiffs filed I.A.No.1381 of 2012 to restore the suit, which was dismissed for default on 10.10.2011. When the application was filed, the third defendant died and against him, the application was not prosecuted and after restoration of the suit, the plaintiffs filed I.A.No.1591 of 2013 to condone the delay of 525 days in filing application to set aside abatement and to bring on record the Legal Representatives of the third defendant. The application was opposed by the petitioners stating that they were not given opportunity to contest the petition filed by the plaintiffs for condonation of delay and for restoring the suit. Despite objections by the petitioners, the trial Judge allowed the application. Aggrieved by the same, the present revision is filed.

3. Mr.B.Jawahar, learned counsel for the petitioners submitted that the plaintiffs in earlier application filed a memo stating that the petition filed under Section 5 was already dismissed against the third respondent and hence, he is not a necessary party in the application. Therefore, the subsequent application is not maintainable in law.

4. I do not agree with the contention of the learned counsel for the petitioners. It is seen that the suit was filed for declaration and permanent injunction and admittedly, the suit was dismissed for non-prosecution on 10.10.2011. When the earlier applications were filed to condone the delay and to restore the suit, the third defendant died and therefore, the applications were dismissed against the third defendant. After the suit was restored to file, the plaintiffs filed the application to condone the delay in filing a petition to set aside abatement and to bring on record the Legal Representatives of the third defendant.

5. The trial Court after considering the nature of the claim and the pendency of the suit for more than 15 years, allowed the application, permitting the plaintiffs to bring the Legal Representatives on record. I am of the view that the Court has to do substantial justice to the parties and cannot entertain hyper technicalities while considering the application for condonation of delay. I do not find any infirmity or irregularity in the order impugned in this revision.

In the result, the revision is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

gms
To
Additional District Munsif Court , Gingee.

23.03.2015

K.KALYANASUNDARAM,J.,

C.R.P. (PD) No. 1224 of 2015

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