

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2015

CORAM:

THE HON'BLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P.No.2533 of 2015

and

M.P.No.1 of 2015

1.Mrs.Alamelu

2.Mr.Rajadurai

3.Mr.Rajasekaran

... Petitioners/Defendants/Petitioners

Vs.

Mrs.Irudhayameri

... Respondent/Plaintiff/Respondent

Prayer:

Civil Revision Petition filed under section 115 of C.P.C. against the order dated 06.06.2015 made in I.A.No.12 of 2015 in A.S.S.R.No.1291 of 2015 on the file of the Principal District and Sessions Judge, Ariyalur.

For Petitioners : Mr.A.S.Mujibur Rahman

For Respondent : Mrs.Usha Raman

O R D E R

The revision petitioners are the defendants in O.S.No.87 of 2010 on the file of the Subordinate Judge, Ariyalur. The respondent herein is the plaintiff in the said suit which was filed for specific performance.

2. The said suit was contested and a decree was passed on merits on 15.11.2012.

3. Thereafter, E.P.No.51 of 2013 was filed by the respondent and when notice was served to the revision petitioners, they did not choose to contest the same and hence, E.P.No.51 of 2013 was allowed and the sale deed was executed by the Trial Court on 24.11.2014. A copy of the sale deed is also produced before this Court.

4. While so, the respondent filed E.P.No.31 of 2015 for delivery of possession. In these circumstances, the revision petitioners also filed an application in I.A.No.12 of 2015 in A.S.S.R.No.1291 of 2015 to condone the delay in filing the appeal against the judgment and decree dated 15.11.2012 made in O.S.No.87 of 2010.

5. After contest, the learned Subordinate Judge, Ariyalur has passed an order dated 06.06.2015 in I.A.No.12 of 2015 in A.S.S.R.No.1291 of 2015, rejecting the same and the present Civil Revision Petition is preferred against the aforesaid order.

6. Heard both sides.

7. The learned counsel for the revision petitioner would submit that the appeal could not be pursued because of non-payment of sufficient Court fee at the time of preferring the appeal and further, the appeal was filed on 18.03.2013, while the limitation for filing appeal, expired on 15.12.2012. According to him, the appeal was filed in SR.A.S.No.1430 of 2013 on 18.03.2013. However, the appeal papers were returned for not paying appropriate Court fee. Further, according to him, the delay was only about 90 days.

8. But the learned counsel for the respondent would submit that the application in I.A.No.12 of 2015 arises out of A.S.S.R.No.1291 of 2015 and not out of SR.A.S.No.1430 of 2013. It is not known as to why the revision petitioners did not choose to pursue the appeal in SR.A.S.No.1430 of 2013. Further, the application in I.A.No.12 of 2015 was filed to condone the delay of 754 days in filing the appeal against the judgment and decree dated 15.11.2012 made in O.S.No.87 of 2010.

9. The first reason given by the revision petitioners is that they were not able to pay the Court fee and therefore, it was not possible for them to file the appeal within the stipulated time. However, the appellate Court after perusing the records found that the appeal was not returned for non-payment of sufficient Court fee and hence, rejected the contention made by the petitioners.

10. The next ground raised by the revision petitioners is that the revision petitioners were not doing well and due to their family problems, it was not possible for them to file the appeal within time. After considering the said contention, the Appellate court also rejected the same holding that the petitioners have not stated the nature of disease suffered by them and they had also not produced any doctor certificates to prove their illness.

11. Furthermore, as rightly pointed out by the learned counsel for the respondent, already E.P.No.51 of 2013 was allowed and the sale deed was executed by the Trial Court on 24.11.2014, which was taken note of already.

12. For all these reasons, I am not inclined to interfere with the order dated 06.06.2015 passed by the Trial Court in I.A.No.12 of 2015 in A.S.S.R.No.1291 of 2015. Consequently, Civil Revision Petition stands dismissed. Connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

The Principal District and Sessions Judge, Ariyalur.

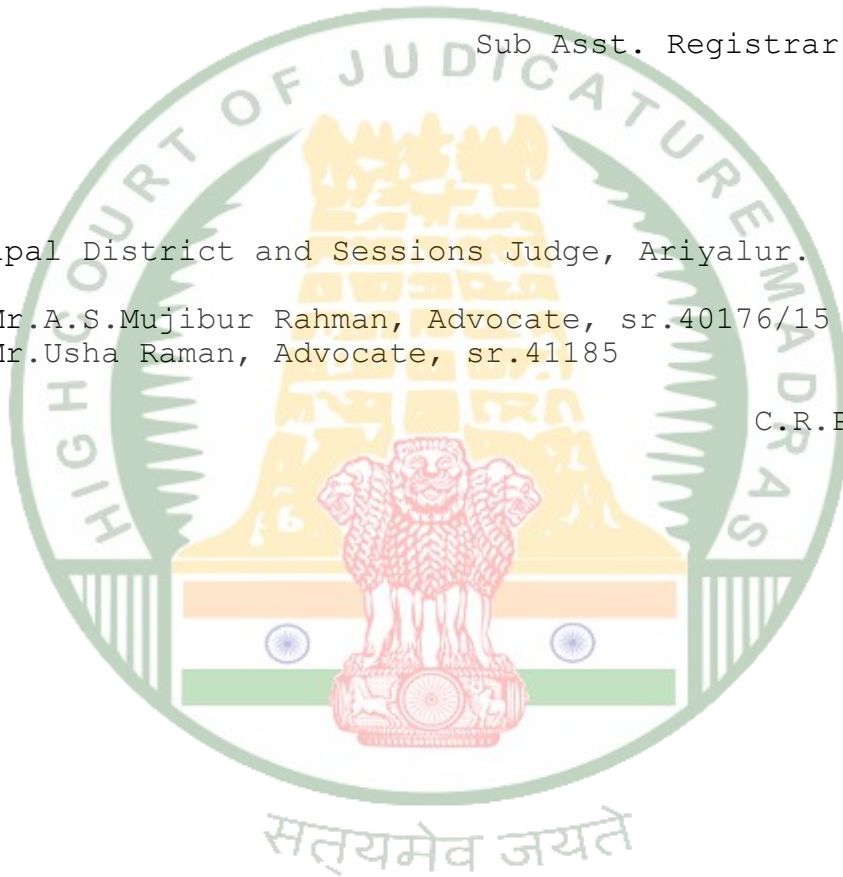
+1 cc to Mr.A.S.Mujibur Rahman, Advocate, sr.40176/15

+1 cc to Mr.Usha Raman, Advocate, sr.41185

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