

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD) No.5025 of 2014 &

M.P.No.1 of 2014

1.Najimunissa (deceased

2.F athima alias Mumtaz

3.E.A.Basheerunissa Bi

(3rd petitioner brought on record as LR
of the deceased 1st petitioner vide order of
court dated 28.9.2015 in M.P.No.1/2015

... Petitioners

v.

A.Khairunnissa

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree dated 07.11.2014 passed by the XIX Additional Judge, City Civil Court at Chennai in C.M.P.No.30 of 2014 in A.S.No.106 of 2014.

For Petitioner : Mr.T.Velumani

For respondent : Mr.D.Nellaippan

O R D E R

Challenging the fair and final order passed in C.M.P.No.30 of 2014 in A.S.No.106 of 2014 on the file of XIX Additional Judge, City Civil Court, Chennai, the appellants have filed the above Civil Revision Petition

2. The revision petitioners filed a petition in C.M.P.No.30 of 2014 under Order 41 Rule 27 of CPC to examine the witnesses signed in the affidavit of declaration of HIBA marked as Ex.B3 in the suit in O.S.No.2371 of 2010 on the file of IV Additional Judge, City Civil Court, Chennai to prove the genuineness of the said affidavit of declaration.

3. The Lower Appellate Court dismissed the application separately.

4. It is settled position that an application filed under Order 41 Rule 27 of CPC has to be disposed of along with the appeal and not by a separate order. In spite of the settled position, the Lower Appellate court has dismissed the application separately. Against which, the appellants have filed the above Civil Revision Petition.

5. In these circumstances, the fair and decretal order dated 07.11.2014 made in C.M.P.No.30 of 2014 in A.S.No.106 of 2014 on the file of XIX Additional Judge, City Civil Court, Chennai deserves to be set aside.

Accordingly, the same is set aside and the matter is remanded back to the XIX Additional Judge, City Civil Court, Chennai for fresh consideration. The Lower Appellate Court is directed to take up the application in C.M.P.No.30 of 2014 along with the appeal in A.S.No.106 of 2014 and dispose of both the appeal as well as the miscellaneous petition within a period of six weeks from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.11.2015

Index : Yes/No

Note : Issue copy of the order by 27.11.2015

Rj

To

The IX Additional Judge,
City Civil Court,
Chennai,

M. DURAISWAMY,J.,

Rj

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