

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2015

CORAM

THE HONOURABLE MR. JUSTICE **D.HARIPARANTHAMAN**

C.R.P.(PD)No.3286 of 2015 and
M.P.No.1 of 2015

S.V.Munusamy

... Petitioner

vs.

1.S.A.Krishnan
2.S.G.Jagadhalan
3.C.Mani

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 11.03.2015 made in I.A.No.537 of 2012 in O.S.No.242 of 2001 on the file of the Additional District Munsif, Vellore.

For Petitioner : Ms.D.Kamachi

ORDER

The revision petitioner is the first defendant in O.S.No.242 of 2001. The first respondent is the plaintiff, respondents 2 and 3 are the second and third defendants in the suit on the file of the Additional District Munsif, Vellore.

2. The said suit was filed for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit properties.

3.The revision petitioner filed written statement during 2002. However, the suit was not disposed of and the same is pending.

4. While so, the suit was dismissed for default on 06.01.2010. An application was filed under Order 9 Rule 9 of C.P.C. in unnumbered I.A. of 2010 in O.S.No.242 of 2001, to set aside the ex parte decree of dismissal, dated 06.01.2010 and restore the suit. The said application was filed within 30 days.

5. The learned counsel, who represented the plaintiff also sent a notice dated 05.06.2010 to the respondents about the filing of the aforesaid interim application for restoration of the suit.

6. While so, after two years, I.A.No.537 of 2012 was filed to condone the delay of 868 days in filing the petition to restore the main suit. The reason assigned by the plaintiff was that he suffered knee pain and was bed ridden.

7. The revision petitioner contested the matter seriously. A counter affidavit was filed explaining the aforesaid facts and particularly, about the filing of the earlier application within 30 days. The revision petitioner sought to dismiss I.A.No.537 of 2012.

8. Before the trial Court, in I.A.No.537 of 2012, on the side of the plaintiff, he examined himself as P.W.1 and on the side of the respondent, two witnesses viz., R.W.1 and R.W.2 were examined. R.W.1 was the revision petitioner and R.W.2, was the Advocate, who represented the plaintiff earlier. On the side of the respondent, three documents were filed and marked as Exs.R1 to R3.

9. After hearing both sides, the Trial court found that the plea set up by the plaintiff that he suffered knee pain was not proved. The Trial court has also come to the conclusion that earlier application was filed by the plaintiff within 30 days to set aside the ex parte decree of dismissal. The Trial court took into account the fact that there was a change of counsel and the new counsel filed I.A.No.537 of 2012 in O.S.No.242 of 2001. In fact the earlier counsel was examined as R.W.2 in the said interim application. The Trial court also took into account the fact that the present counsel is not the counsel, who appeared earlier. In these circumstances, the Trial Court thought it fit to give an opportunity to the plaintiff, as the plaintiff claimed that he was in possession of the property. In such view of the matter, the interim application was allowed and the Trial court thought of compensating the petitioner by awarding cost of Rs.3500/-.

10. Taking into account the entirety of the circumstances of the case, I do not find any infirmity in the order passed by the Trial Court. Further, no prejudice would be caused to the petitioner in contesting the case. Hence, this Civil Revision Petition is dismissed. The Trial court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

18.08.2015

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D.HARIPARANTHAMAN,J.,

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To

The Additional District Munsif Court,
Vellore.

C.R.P.(PD)No.3286 of 2015

18.08.2015