IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2015

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The Honourable Mr.**Justice N.KIRUBAKARAN**

C.R.P. (PD) No.833 of 2015
& M.P.No.1 of 2015

1.C.Janakaraj
2.Venu

.. Petitioners/Defendants

Vs.

1.Devagi
2.Lakshmi

... Respondents/Plaintiffs

Civil Revision Petition has been filed against the judgment and decreetal order dated 12.12.2014 in I.A.No.409 of 2014 in O.S.No.97 of 2014 on the file of the District Munsif, Ambur.

For Petitioner : Ms. Stailice for
Mr. V. Ragavachari

O R D E R

Petitioners who are defendants have come forward before this Court challenging the order passed by the Trial Court in restoring the suit filed by the respondents for permanent injunction which was dismissed for default on 21.07.2014.

2. Heard Ms.Starly, learned counsel representing Mr.V.Ragavachari, learned counsel for the petitioner and perused the records.

3.Learned counsel for the petitioner who very strenuously argued that the petition cannot be maintained by the respondents as the respondents themselves are power of attorney who cannot delegate. Further, the said application has to be dismissed. Secondly she would state that when there is no pleading and averment in the petition regarding the connected suit in O.S.No.98 of 2011, the Trial Court took note of another suit and allowed the application stating that both the suits can be disposed of jointly. She would point out that there is nothing to show that there is connection between the parties and the suit property.

4.This Court is unable to appreciate the contention raised by the learned counsel for the petitioner that the power of attorney cannot further delegate the power for the reason that this court is not bound by the technicalities. What is tobe seen is rendering of justice. The suit filed by the respondent for permanent injunction was dismissed for default on 21.07.2014. When the matter was called on 21.07.2014 in the morning, when the counsel was unable

to appear before the Court and the same was passed over, and even after sometime when the matter was called, there was no appearance and the suit was dismissed for default. Only to restore the suit which was dismissed for default on 21.07.2014, the application was filed. The Trial Court accepted the reasoning given by the respondents because of the absence of the counsel, the suit was dismissed for default. From the above, it is clear that because of the fault of the counsel only the suit was dismissed for default. For the fault of the counsel, the respondents cannot be burdened with a dismissal order.

5. Taking note of the above circumstances, the petition was allowed. Though already the another suit in O.S.No.98 of 2011 is pending between the same parties in respect of the same property before the same court and that is the reason given in paragraph 8 of the order, the trail court rightly made an order that the suit can be disposed of alongwith O.S.No.98 of 2011 so that the dispute between the parties can be adjudicated appropriately. The reasoning given by the trial court cannot be said to be wrong and there is no perversity or illegality in the order passed by the Trial Court.

N.KIRUBAKARAN, J.,

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6. Hence, this Civil Revision Petition failed and the same is dismissed. Further taking note of the fact that the suit was filed in the year 2011, the Trial Court is directed to dispose of the same on or before 30.06.2015. No costs. Consequently, connected miscellaneous petition is closed.

03.03.2015

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To

1. The District Munsif, Ambur.

C.R.P.(PD)No.833 of 2015