

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).Nos.4402 & 4403 of 2010

1.Natarajan (Deceased)

2.Pushpa

3.Raveendran

... Petitioners in both CRPs

Vs.

1.Chandramathi

... 1st Respondent in CRP.NPD.4402/10

1.Ramasamy

... 1st Respondent in CRP.NPD.4403/10

2.Vasanthi

3.Palanisamy

4.Subbathal

5.N.Prabhakaran

... Respondents 2 to 5 in both CRPs

(Petitioners 2 & 3 and R5 brought on record as LRs of the deceased sole petitioner vide order dated 30.04.2015 made in M.P.Nos.1 to 3 & 1 to 3 in C.R.P.(NPD).Nos.4402 & 4403 of 2010; R2 to R4 remained exparte and hence no notice to be served on them.)

Civil Revision Petitions filed under Section 115 of the Civil Procedure Code against the fair and decretal order made in I.A.Nos.739 & 741 of 2001 in O.S.Nos.216 & 217 of 1996 dated 04.02.2003 & 22.11.2002 respectively on the file of the District Munsif Court, Dharapuram and as confirmed in I.A.Nos.61 & 62 of 2003 in C.F.R.Nos.4769 & 4770 of 2003 dated 15.03.2004 on the file of the Sub Court, Dharapuram.

For Petitioners : Mr.K.Prem Kumar
(in both CRPs)

For Respondents : Mr.M.Guruprasad (R1)
(in both CRPs) R2 to R4 given up

COMMON ORDER

C.R.P.(NPD).No.4402 of 2010 arises against the fair and decreetal order passed in I.A.No.61 of 2003 in C.F.R.No.4769 of 2003 on the file of the Subordinate Court, Dharapuram. Challenging the said order, the 1st defendant has filed the said Civil Revision Petition. During the pendency of the Civil Revision Petition, the 1st defendant had died and his legal representatives were brought on record as the petitioners 2 & 3.

2.C.R.P.(NPD).No.4403 of 2010 arises against the fair and decreetal order passed in I.A.No.62 of 2003 in C.F.R.No.4770 of 2003 on the file of the Subordinate Court, Dharapuram. Challenging the said order, the 1st defendant has filed the said Civil Revision Petition. During the pendency of the Civil Revision Petition, the 1st defendant had died and his legal representatives were brought on record as the petitioners 2 & 3.

3.The plaintiff filed the suits in O.S.Nos.216 & 217 of 1996 for declaration, permanent injunction and for other reliefs. The defendants filed their written statement and were contesting the suit. Since the

defendants failed to appear before the trial Court, the trial Court passed an ex parte decree on 17.10.2000. Thereafter, the 1st defendant filed an application in I.A.No.61 of 2003 in C.F.R.No.4769 of 2003 to condone the delay of 27 days in filing the petition to set aside the ex parte decree and I.A.No.62 of 2003 in C.F.R.No.4769 of 2003 to condone the delay of 85 days in filing the petition to set aside the ex parte decree. In the affidavit filed in support of the petitions, the 1st defendant has stated that he was suffering from Jaundice. He was not in a position to appear before the trial Court and file the application to set aside the ex parte decree in time. The averments stated in the affidavit filed in support of the petitions were disputed by the plaintiff.

4.The trial Court, after taking into consideration the case of both parties, dismissed both the applications finding that the defendant had remained absent for the fourth time and filed applications to set aside the ex parte decree for the fourth time now. Further, the trial Court observed that it is the habit of the defendant to remain absent and file application to set aside the ex parte decree in order to drag on the matter for indefinite period. When the 1st defendant had remained absent on four occasions and now has filed the present applications to set aside the ex parte decree stating that he was suffering from Jaundice, in the absence of any

acceptable evidence given by the 1st defendant, the trial Court has rightly dismissed the applications. That apart, the conduct of the party would also establish that he was not diligent in prosecuting the matter in a proper manner and having left the suit to be decreed *ex parte* on four occasions, no further indulgence can be shown to the 1st defendant. Taking into consideration all these aspects, the trial Court has rightly dismissed both the applications.

5. In these circumstances, I do not find any error or irregularity in the orders passed by the trial Court. The Civil Revision Petitions are devoid of merits and the same are liable to be dismissed. Accordingly, the Civil Revision Petitions are dismissed. No costs.

Index : No
Internet : Yes
va

09.12.2015

To

1.The District Munsif Court,
Dharapuram.

2.The Sub Court,
Dharapuram.

M.DURAIWAMY,J.
va

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