

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.2281 of 2009

Balakrishnan

.. Appellant

Vs.

1.The Special Tahsildar (Land Acquisition No.3)
At Office of Land Acquisition
Neyveli - 2.

2.Special Tahsildar (Land Acquisition No.15)
At Office of Land Acquisition,
Neyveli.

3.Special Tahsildar (Land Acquisition No.12)
At Office of Land Acquisition
Neyveli - 2.

4.Mohammed Ismail

5.Rangan

6.Krishnamurthy

7.Balu

8.Haridass

9.Sankar

10.Ramalingam

11.Radha

12.BGanumathi

13.Renuka

.. Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 01.06.2009 in I.A.No.725 of 2008 in O.S.No.13 of 2005 on the file of the Additional District (Fast Track Court No.3), Virudhachalam.

For Appellant
For Respondents

: Ms.R.Meenal
: Ms.Sri Priya [for R5 to R13]
R1 to R3 - No appearance

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the order of dismissal dated 01.06.2009 passed in I.A.No.725 of 2008 filed under Order IX Rule IX CPC seeking to restore the suit in O.S.No.13 of 2005 on the file of the Additional District Court, Fast Track Court No.III, Virudhachalam.

2. The learned counsel for the appellant/second petitioner submitted that the suit was originally laid before the Principal District Court, Cuddalore as O.S.No.44 of 2004 for partition and other reliefs, and it was subsequently transferred to Additional District Court, Fast Track Court No.III, Virudhachalam, where it was renumbered as O.S.No.13 of 2005. As the appellant/second plaintiff was not aware of the said transfer, he did not appear before the Court, as a consequence, the suit was dismissed for non-appearance of the plaintiff. Before the trial Court, the appellant had filed an application in I.A.No. 725 of 2008 for restoring the suit, supported by an affidavit wherein he has averred the facts as stated above and the respondents have endorsed no objection for allowing the said application. The trial Court allowed the said application enjoined with a condition that appellant should pay Rs.500/- each to the respondents (respondents 2 to 14) on or before 31.05.2006. Again the appellant/second petitioner defaulted in paying the cost as directed by the trial Court. Hence, restoration came to be dismissed.

3. On a matter as simple as restoring the partition suit, the same is left pending for close to seven years now. In the meantime, when the case was posted on 10.12.2015, the appellant appeared to have informed the Court that Mohammed Ismail, the fourth respondent was dead and accordingly this Court directed him to take steps to implead the legal heirs of the fourth respondent. Yet another time, the appellant defaulted and no steps were taken to bring on record the legal representatives of the fourth respondent. Thereafter, the matter came to be posted on 21.11.2016. On that date, the learned counsel for the appellant did not appear, therefore the matter stood over to the next day i.e., on 22.11.2016. On that day (22.11.2016), the learned counsel for the appellant appeared, but made a dramatic statement that Mohammed Ismail, the fourth respondent was alive. To confirm the same, the matter was again posted to 23.11.2016.

4. This time the counsel for respondents 5 to 13 made a statement before the Court that Mohammed Ismail was dead. As the status of Mohammed Ismail was thus hanging in doubt, this Court directed the appellant to file an affidavit as to the actual status of Mohammed Ismail.

5. In yet another twist of events, today the learned counsel for the appellant made a statement that the whereabouts of Mohammed Ismail is not known and at any rate claimed title only under first defendant (whose legal heirs are respondents 5 to 13). The learned counsel would also inform the Court that Mohammed Ismail has restored the property that he purchased to the family of

his vendor, and as on date the property said to have been purchased by Mohammed Ismail is believed to be in possession of respondents 5 to 13 and added that the appellant would not press the appeal as against the respondents.

6. While it may be true that Courts do not exist to discipline the litigants, it does not follow that litigant may have the liberty to approach litigations without adequate responsibility. Hence, this Court allows the Civil Miscellaneous Appeal with a direction that it doubles the payment of costs to each of the respondents 5 to 13. In all, the appellant is directed to pay total costs of R.9,000/- to respondents 5 to 13, or to their counsel on or before 02.12.2016 and a memo is directed to be filed to the Registry and on failure to file the memo as directed, the appeal shall be posted for dismissal on 05.12.2016. No costs.

25.11.2016

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Index : Yes/No
Internet : Yes/No

To:

The Motor Accident Claims Tribunal,
(V Court of Small Causes),
Chennai.

N.SESHASAYEE,J

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25.11.2016

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