

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.1200 of 2014

V.Devasagayam

... Petitioner

Vs

1.N.Sudamani

2.S.Nirmala

3.P.Govindarajalu

4.C.Muthaih

... Respondents

Civil Revision Petition under section 115 of Civil Procedure Code against the fair and decreetal order dated 25.09.2013 made in I.A.No.1389 of 2013 in I.A.No.659 of 2013 in O.S.No.32 of 2012 before the Additional District Judge-II, Poonamallee.

For Petitioner : Mr.K.Balaji

For Respondents : Mr.G.Prabhakaran (R3)

R1, R2 & R4 - no appearance

ORDER

Challenging the fair and decreetal order passed in I.A.No.1389 of 2013 in I.A.No.659 of 2013 in O.S.No.32 of 2012 before the Additional District Judge-II, Poonamallee, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.32 of 2012 for declaration, recovery of possession and permanent injunction.

3.Since the plaintiff failed to appear before the trial Court on 16.04.2013, the suit was dismissed for non-prosecution. Thereafter, the plaintiff filed an application in I.A.No.659 of 2013 under Order 9 Rule 9 of the Civil Procedure Code to restore the suit. After contest, the trial Court allowed the application in I.A.No.659 of 2013 on condition the plaintiff paying a sum of Rs.1,000/- to the Taluk Committee, Poonamallee on or before 10.09.2013. Since the cost was not paid in time, the trial Court dismissed the application in I.A.No.659 of 2013. Subsequently, the plaintiff filed an application in I.A.No.1389 of 2013 under Section 148 of the Civil Procedure Code to extend the time. In the affidavit filed in support of the petition, the plaintiff has stated the reasons for not paying the cost amount of Rs.1,000/- in time. The defendants filed their counter and opposed the application. The trial Court, taking into consideration the case of both parties, dismissed the application.

4.When the matter is taken up for hearing, the learned counsel appearing for the revision petitioner submitted that the petitioner/plaintiff is willing to pay a cost of Rs.5,000/- (Rupees five thousand only), today

itself and on payment of cost, the suit may be restored to file.

5.Since the plaintiff has satisfactorily explained the reasons for not paying the cost amount on or before 10.09.2013, I am of the view that in order to prosecute the suit and in the interest of justice, the plaintiff can be given an opportunity to prosecute the suit. I am also satisfied with the reasons stated in the affidavit filed in support of the petition in I.A.No.1389 of 2013.

6.The learned counsel appearing for the respondents also agreed to receive the cost amount of Rs.5,000/-.

7.The learned counsel for the petitioner also handed over a sum of Rs.5,000/- (Rupees five thousand only) to the learned counsel for the respondents, which was also acknowledged by the learned counsel for the respondents.

8.In these circumstances, the order passed in I.A.No.1389 of 2013 stands set aside and modified to the effect that the application in I.A.No.659 of 2013 stands allowed on condition the petitioner/plaintiff paying a sum of Rs.5,000/- (Rupees five thousand only) to the respondents.

Since the petitioner had paid the cost amount of Rs.5,000/- in the open Court to the learned counsel for the respondents, the application in I.A.No.1389 of 2013 and also the application in I.A.No.659 of 2013 stand allowed. The suit in O.S.No.32 of 2012 is restored to file.

9.Since the suit is pending from the year 2012, I direct the Additional District Judge-II, Poonamallee, to dispose of the suit in O.S.No.32 of 2012, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order.

10.In the result, the Civil Revision Petition stands allowed. No costs.

Index : No
Internet : Yes
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20.09.2016

To

The Additional District Judge-II,
Poonamallee.

M.DURAIWAMY,J.
va

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