

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.1696 of 2016

Arulmigu Pandeewara Swamy Temple
Rep. By its Executive Officer,
Karumapuram Village,
Thiruchengode Taluk,
Namakkal Dt.

... Appellant

Vs.

Natarajan(died)
1.Saraswathi
2.Jagatheeswaran
3.Thandapani

... Respondents

Cause Title accepted as per Order
dated 18.07.2016 made in CMP.10985
of 2016 in CMA.Sr.45538 of 2016

Prayer: Civil Miscellaneous Appeal is filed Under Order IX Rule 9 readwith Section 151 of C.P.C., against the fair and Decreetal order dated 05.04.2016 made in I.A.No.91 of 2016 in O.S.No.148 of 2014 on the file of the Principal District Court, Namakkal.

For Appellant : Mr.N.Subramaniyan

JUDGMENT

The Appeal is taken up for hearing at the admission stage itself.

2. The fair and decreetal order dated 05.04.2016 and made in I.A.No.91 of 2016 in the suit in O.S.No.148 of 2014 on the file of the learned Principal District Court, Namakkal are under challenge in this memorandum of Civil Miscellaneous Appeal.

3. The appellant herein is the plaintiff in the suit in O.S.No.148 of 2014, whereas the respondents are the defendants (LRs of the deceased respondent/Natarajan). The appellant herein had filed the above suit seeking the relief of declaration.

4. It is manifested from the records that the respondents/defendants had contested the suit by filing their written statement and after formulating necessary issues, based on the pleadings of the parties to the suit, the Trial Court had also formulated the necessary issues and thereafter, the appellant had filed a proof affidavit and thereafter the trial was commenced. Under such circumstances, the suit stood posted on 29.07.2015 and on that day, the appellant was not able to appear and therefore, he was called absent and the suit was dismissed for non-prosecution.

5. Thereafter, the appellant had filed an application in I.A.No.91 of 2016 under Order IX, Rule 9 r/w Sec.151 of the Code of Civil Procedure to restore the suit, which was dismissed on 05.04.2016 and that application, even without inviting the objection from the respondent, was straight away rejected by the learned trial Judge on the ground that the respondent/defendant, being senior citizen, had refused to receive the copy of the proof affidavit and notice along with copies of the documents and that the defendants had cross examined the witnesses and the manner in which he was said to have been cross examined was not served on him and he was also not allowed to witness the answer. The Court has to record the same clearly. Only on this ground alone, the Trial Court had proceeded to dismiss the petition.

6. Heard Mr.N.Subramaniyan, learned counsel for the appellant.

7. In fact, the application in I.A.No.91 of 2016 was filed within the prescribed time limit. It is also to be noted that the suit in O.S.No.148 of 2014 was dismissed for default on 27.01.2016. In the impugned order, the Trial Court had observed that the notice was issued to the respondent and that, he had appeared in person. He had actually not received the notice and hence, the notice was returned. The Trial Judge has also observed that the respondent/defendant, Natarajan in this case was very keen in the proceedings of the suit and that, he used to be present on all hearings without fail. On the request made by the defendants, the case was posted for trial and the defendants refused to receive the copy of the proof affidavit and notice along with the documents.

8. This Court has carefully perused the impugned order and finds that the order itself seems to be perverse in nature. The observation made by the learned Trial Judge in the impugned order is also not sustainable. It is significant to note that the learned Trial Judge has also observed that even though this Court has also much concerned with the temple festival

matter, but at the same time such a big cases i.e., in which, one of the parties appear in person, who is a senior citizen and who has repeatedly represented the Court for speedy disposal of the case, this Court is of the view that it is just and fair to dispose of the case in the principles of interest of justice.

9. The conduct of the Trial Judge itself is not in an appreciable manner and in order to facilitate the respondents/defendants and to curtail the trial proceedings, he had abruptly proceeded to dismiss the petition for which he has not assigned any valid reason. The order was not fully justified and under the said circumstances, the impugned order is liable to be set aside. Accordingly, the Appeal is allowed at the stage of admission and the impugned order dated 05.04.2016 is set aside and the application in I.A.No.91 of 2016 is allowed and the suit in O.S.No.148 of 2014 which was dismissed for default on 27.01.2016 is restored to its original file. After setting aside the order of dismissal, the learned Trial Judge is directed to dispose of the suit purely on merit within a prescribed period of three months from the date of receipt of a copy of the order, without causing any further delay. However, there is no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gv

To

The Principal District Judge,
Namakkal.

+1cc to Mr.N.Subramaniyan, Advocate, S.R.No.46778

C.M.A.No.1696 of 2016

AD(CO)
CA(26/10/2016)