

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 25.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.82 of 2016

R.Madanraj

...Appellant/ Petitioner

Versus

Lakshmanan (Died)

1.G.Muthusamy

2.R.Balasubramanyan

3.K.Subramaniyan

4.A.Anandhan

5.Ponnusamy

6.Ayyavoo @ Palanivel Gounder

7.A.Krishnan

R.Krishnan (Died)

8.S.Balu

9.A.Sivagnanam

10.Muthu Gounder

11.P.Murugesan

12.Rasipuram Teachers and

Government Employee Co-operative Housing Society Ltd.,

Rasipuram,

Namakkal District.

13.Rajendiran

14.The Sub Registrar,

Office of Sub Registrar,

Valapadi 636 115,

Salem District.

15.The District Collector,

Collectorate,

Namakkal District.

16.Venkatesan

17.K.Ravi

18.Vasanthi

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (e) of the Code of Civil Procedure, 1908 against the fair and final order dated 06.07.2015 made in I.A.No.107 of 2012 in P.O.P.No.46 of 2010 on the file of the Principal District Court, Namakkal.

For Appellant

:: Mr.T.Murugamanickam

J U D G M E N T

This civil miscellaneous appeal is taken up for disposal at the stage of admission itself.

2.Mr.Madhanraj, being aggrieved by the impugned decretal order dated 06.07.2015 made in I.A.No.107 of 2012 in P.O.P.No.46 of 2010 dismissing his petition filed under Order 9 Rule 9 read with Section 151 CPC to restore P.O.P.No.46 of 2010, dismissed for default on 01.03.2012, has filed the present civil miscellaneous appeal questioning the correctness on the same.

3.Mr.T.Murugamanickam, learned counsel for the appellant vehemently would submit that when the suit was dismissed for default on 01.03.2012, the appellant suffered from viral fever and he was not able to attend the court on that day. The learned trial court has wrongly dismissed the suit for default without giving opportunity of adjourning the matter. Therefore, the appellant who was unable to attend the court due to his illness substantiating all the reasons for not appearing before the trial court on 01.03.2012 has filed the petition under order 9 Rule 9 read with Section 151 CPC to restore the suit which is dismissed for default. When the appellant/plaintiff has filed the said I.A. for restoration within 25 days without any delay enclosing medical report to show that he was suffering from Entric fever from 20.02.2012 to 14.03.2012, the learned trial court has wrongly dismissed the I.A. on the ground that he has not produced any other documents such as medical prescription, medical bills, etc., to substantiate his statement. In the absence of medical proof, he pleaded that the trial court ought to have given opportunity to the plaintiff/appellant to produce the aforesaid documents but the trial court has wrongly dismissed the petition under order 9 Rule 9 CPC read with section 151 CPC and the same is liable to be interfered with by this court.

4.This court is not able to see any merit on his submissions for the reason that the suit was filed by the appellant/plaintiff for the relief of declaration and permanent injunction. In the said suit, the fifteenth defendant is the father of the plaintiff. Since a sale deed has been executed with regard to the suit properties under the guise of mortgage deed, the plaintiff/appellant has filed the suit for the abovesaid relief. When the matter was posted for hearing on 01.03.2012, the appellant/plaintiff was not able to attend the court due to his illness and hence, the suit was dismissed for default on 01.03.2012. Subsequently, he has filed the petition under Order 9 Rule 9 read with Section 151 CPC to restore the suit in P.O.P.No.46 of 2010. A strong counter affidavit has been filed by the defendant/respondent taking ground that the plaintiff had not appeared wilfully and deliberately and the plaintiff's intention is

only to drag on the proceedings and therefore, there was no bonafide on the part of the plaintiff. Therefore, the trial court considering the pros and cons of the pending suit and the petition filed under order 9 Rule 9 read with Section 151 CPC, finding that when the appellant/plaintiff has come to this court to restore the suit dismissed for default on 01.03.2012, he has failed to file the relevant documents like medical prescription, medical bills to substantiate his statement and agreeing with the case of the defendant that the plaintiff has deliberately failed to appear, refused to restore the suit.

5.This court also finds merits on the reason given by the learned trial court for the simple logic that when there was allegation by the defendant against the plaintiff/appellant and the suit was dismissed for default on 01.03.2012 and the plaintiff had not appeared on that day due to his illness, he has to substantiate the same by filing medical prescription, medical bills, etc., But the appellant has simply filed a medical report given by one Dr.Manjamuthu, Salem, saying that he was suffering from Entric fever from 20.02.2012 to 14.03.2012. It is not known as to how the appellant has forgotten to enclose the documents such as medical prescription and medical bills for the period he was suffering from 20.02.2012 to 14.03.2012. When a person comes to the court saying that he was suffering from fever, he should not only file medical report issued by the doctor but also he should file medical prescription and medical bills showing consumption of medicines that were taken by him, as sufficient documents without which it is not open to anyone to file only one page medical certificate claims to have been issued by doctor. Therefore, this Court finds no merits or any infirmity in the impugned order passed by the trial court and therefore, the order passed in I.A.No.107 of 2012 is confirmed. Accordingly, the civil miscellaneous appeal fails and the same is dismissed. No costs.

Sd/-
सत्यमेव जयते

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

vri

WEB COPY

To

The Principal District Court,
Namakkal.

1 cc to M/s.T. Murugmanickam, Advocate, Sr. 4313

CMA No.82 of 2016

RSI (CO)
kk 2/5



WEB COPY