

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) Nos.2458 and 3936 of 2015

1.Chokkammal
2.Dhanalakshmi
3.Kanchana D.Sokka
4.Shanmugavelu D.Sokka
5.Thanikaivelu D.Sokka
6.Kumaravelu D.Sokka

...Petitioners in both CRPs

versus

1.Dhanalakshmi
2.Yasodha
3.Dlip Kumar
4.Balaji
5.Sivaji
6.Ramani
7.Rajendran
8.Karpagam
9.V.V.Azeez
10.V.V.Ahammed Kutty
11.P.Kunahah
12.Kanyakumari

...Respondents in CRP No.2458/2015

Balaji

...Respondent in CRP No.3936/2015

PRAYER in CRP No.2458/2015 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 17.04.2015 passed in I.A.No.14 of 2015 in O.S.No.13174 of 2014 on the file of learned XIX Additional City Civil Judge, Chennai.

PRAYER in CRP No.3936/2015 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 21.08.2015 in I.A.No.182 of 2014 in O.S.No.13174 of 2010 on the file of learned XIX Additional District and Sessions Judge, Chennai.

For Petitioners : Mr.D.Asenthamani

For Respondents : Mr.S.Natarajan for R4 in
CRP No.2458/2015 and
sole respondent in CRP No.3936/2015
RR1 to 3 and 6 to 8 - No appearance
RR9 to 11 - Not ready - in
CRP (PD) No.2458/2015

COMMON ORDER

These two civil revision petitions are at the instance of the plaintiffs in O.S.No.13174 of 2010 on the file of XIX Additional District Court, Chennai.

2. The petition filed by the petitioners in I.A.No.182 of 2014 directing the 4th respondent herein (CRP 2458/2015) to deposit their share of mesne profits was dismissed by the Trial Court. The said order is under challenge in CRP(PD) No.3936 of 2015.

3. The petitioners filed another application in I.A.No.14 of 2015 to condone the delay of 1184 days in filing the petition to restore the amendment petition, which was dismissed for default. The Trial Court dismissed the application. The said order is under challenge in CRP (PD)No.2458 of 2015.

4. When the Civil Revision Petitions were taken up for hearing, the learned counsel for the fourth respondent fairly submitted that the fourth respondent has no objection in condoning the delay. The learned counsel further submitted that the 4th defendant in O.S.No.13174 of 2010 would deposit a sum of Rs.6,000/- towards the proportionate rent payable to the parties. According to the learned counsel, the fourth respondent is agreeable to deposit the arrears amounting to Rs.7,00,000/- at the rate of Rs.50,000/- per month along with future rent at the rate of Rs.6,000/- per month.

5. The 4th respondent is directed to deposit a sum of Rs.7,00,000/- as agreed to at the rate of Rs.50,000/- per month. In addition to the said amount, a sum of Rs.6,000/- shall be deposited every month towards future mesne profits. It is open to the petitioners to file appropriate application before the Trial Court for withdrawal of the amount taking into account their share. The 4th respondent has no objection in allowing the application filed by the petitioners for condoning the delay.

6. The learned Trial Judge is directed to number the application for restoration after condoning the delay and allow the application to amend the prayer to include the relief for payment of mesne profits.

7. The suit is one for partition. Since there are triable issues involved, necessarily, the issue with regard to mesne profits should be framed by the Trial Court. The learned Judge is directed to dispose of all the applications, frame an issue for payment of mesne profits and thereafter, dispose of the suit on merits and as per law, as expeditiously as possible, and in any case, on or before 31 March 2017.

8. This order directing deposit of mesne profits is without prejudice to the contentions of parties with regard to the rate of rent, liability to pay mesne profits and apportionment.

9. The Civil Revision Petitions are disposed of with the above direction. No costs.

21.09.2016

Index : Yes/No
svki

To

The XIX Additional City Civil Court, Chennai.

K.K.SASIDHARAN, J.

(svki)

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