

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.344 of 2015 &

M.P.No.1 of 2015

M.Swaminathan

... Petitioner

v.

1.Arumugam (deceased)

2.T.Velmurugan

3.Indirani Ammal

4.Yuvarani

5.Balasubramaniam

6.Rose

(In view of the endorsement made by
petitioner's counsel dated 7.1.16 and
the order of court dated 7.1.2015 made
in C.R.P.No.344/2015, R2 given up)

(R3 to R6 brought on record as LR's of deceased
R1 vide order of court dated 19.6.2015 made
in M.P.Nos. 1 & 2/2015)

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed on 17.10.2014 in I.A.No.483 of 2011 in O.S.No.186 of 2004 by Principal District Munsif, Kancheepuram (incharge) on the file of Additional District Munsif Court at Kancheepuram.

For Petitioner : Mr.S.Balasubramanian

For respondent : Mr.Y.Jyothish Chander

O R D E R

Challenging the fair and final order passed in I.A.No.483 of 2011 in O.S.No.186 of 2004 on the file of Principal District Munsif Court, Kancheepuram, the 1st defendant has filed the above Civil Revision Petition .

2. The plaintiff filed the suit in O.S.No. 186 of 2004 for declaration and recovery of possession. The 1st defendant filed his written statement and was contesting the suit. The suit was originally filed in the year 1995 numbered as O.S.No.182 of 1995 on the file of Sub Court, Kancheepuram. Subsequently, the case was transferred to the file of Additional District Munsif Court, Kancheepuram and renumbered as O.S.No.186 of 2004.

3. Since the 1st defendant remained absent on 23.03.2010, the Trial Court set him ex-parte and an ex-parte decree was passed on 23.03.2010. Subsequently, the 1st defendant filed an application in I.A.No.483 of 2011 to condone the delay of 448 days in filing the application to set aside the ex-parte decree. In the affidavit filed in support of the application, the 1st defendant has stated that the suit in O.S.No.186 of 2004 was dismissed for

default on 23.10.2007 and that he was under the impression that it was not restored. Further, he has stated that when he received the notice in the Execution Petition, he came to know that the suit was restored and that the same was also decreed. Further, the 1st defendant has stated that his counsel did not inform him about the decree passed in O.S.No.186 of 2004.

4. The plaintiff filed his counter disputing the averments stated in the affidavit filed in support of the application.

5. The Trial Court, taking into consideration the case of both the parties, while dismissing the application found that the 1st defendant had sufficient opportunity to contest the matter and in spite of the same, in order to drag on the matter he remained absent and filed the present application to condone the delay of 448 days in filing the application to set aside the ex-parte decree. The Trial Court, on a perusal of the notice paper found that the main suit in O.S.No.186 of 2004 was dismissed for default on 23.10.2007 for non appearance of the plaintiff and subsequently the suit was restored to file as per the order passed in 13.6.2008. In I.A.No.83 of 2008, 1st defendant's counsel took notice and thereafter he took time from 6.2.2008 to 13.2.2008, 27.2.2008, 5.3.2008, 12.3.2008, 17.3.2008, 24.3.2008, 31.3.2008, 21.4.2008, 28.4.2008, 9.6.2008 and finally on 13.6.2008. The application was allowed for the reason that the 1st defendant has not filed his counter and the suit was restored to file.

Thereafter, the suit has been pending for the examination of P.W.1 and finally on 23.3.2010, Since the defendant remained absent, P.W.1 was examined and an ex-parte decree was passed.

6. The observations of the Trial Court would clearly establish that the 1st defendant was contesting the application in I.A.No.83 of 2008 taking several adjournments and subsequently remained absent. The conduct of the party would clearly establish that only to drag on the matter for an indefinite period, the present application has been filed at a belated stage. The suit is pending for nearly 21 years and in spite of the same, it has not reached the finality. In these circumstances, the Trial Court has rightly dismissed the application.

7. In view of the above, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.01.2016

Index : Yes/No

Rj

To
The Principal District Munsif, Kancheepuram (incharge)
The Additional District Munsif Court ,
Kancheepuram.

M. DURAISWAMY,J.,

Rj

C.R.P.(NPD)No.344 of 2015 &

M.P.No.1 of 2015

07.01.2016