

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4385 of 2015
and M.P.No.1 of 2015

1.M.A.Haneef Mohamed
2.H.M.Sherin Bari

.. Petitioners

Vs

1.Rukiya Beevi
2.S.M.Mohamed Nazeera
3.S.Yasir Arafth
4.S.Abdul Salam
5.Minor S.Fathima Rubaina
rep. by her mother and natural guardian
S.M.A.Mohamed Nazeera

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.06.2015 made in I.A.No.4317 of 2015 in O.S.No.11874 of 2010 on the file of the VI Additional City Civil Court at Madras.

For Petitioner : Mr.V.Raghavachari

ORDER

The Civil Revision Petition is filed against the order dated 29.06.2015 made in I.A.No.4317 of 2015 in O.S.No.11874 of 2010 on the file of the VI Additional City Civil Court at Madras.

2.The respondents as plaintiffs filed a suit for declaration of the settlement deed dated 01.04.2009 executed by the second defendant in favour of the third defendant as null and void, declare the settlement deed dated 01.04.2009 executed by the first defendant in favour of the fourth defendant and also declare the settlement deed dated 19.06.2009 executed by the third defendant in favour of the first defendant as null and void and also declare the settlement deed dated 02.07.2009 executed by the second defendant in favour of the first defendant as null and void and not binding the plaintiffs and also for injunction not to encumber the property and not to interfere the peaceful possession and enjoyment of the same. The defendants 2 and 3/respondents herein filed the written statement and contested the suit. When the matter was posted for trial, the petitioners have not appeared before the Court and hence the suit was dismissed for default on 09.07.2014. The respondents/plaintiffs filed an application to restore the suit along with condonation of delay of 196 days. The Trial Court after hearing both sides, has allowed the application. Against which, the present Civil Revision Petition has been preferred.

3.At the time of admission, argument of the learned counsel for the petitioners is heard in length.

4.Learned counsel for the petitioners submitted that only with a view to drag on the proceeding the respondents/plaintiffs has filed an application and they are not always ready and willing to get along with the Trial and the reason assigned by the respondents/plaintiffs is not sufficient. That factum has not been considered by the Trial Court. Hence, he prayed for setting aside the impugned order passed by the Trial Court.

5.Considered the submissions made by the learned counsel for the petitioners and also perused the typed set of papers.

6.The respondents as plaintiffs filed a suit for declaration of the settlement deed dated 01.04.2009 executed by the second defendant in favour of the third defendant as null and void, declare the settlement deed dated 01.04.2009 executed by the first defendant in favour of the fourth defendant and also declare the settlement deed dated 19.06.2009 executed by the third defendant in favour of the first defendant as null and void and also declare the settlement deed dated 02.07.2009 executed by the second defendant in favour of the first defendant as null and void and not binding the plaintiffs and also for injunction not to encumber the property and not to interfere the peaceful possession and enjoyment of the same. The petitioners who are the defendants 2 and 3 has filed the written statement and contested the suit. When the

matter was posted for trial, because of non-appearance of the plaintiffs, the suit was dismissed for default on 09.07.2014. But it was stated that the junior counsel on record has mistakenly noted the suit number in the first instance and so, they have followed the case on the basis of the wrong case number. Because of that, the plaintiffs were unable to appear before the Court and hence the suit was dismissed for default on 09.07.2014.

7.The defendants have filed an application before the Debt Recovery Tribunal for certain reliefs and at that time only, the plaintiffs came to know about the dismissal. Immediately, they have filed an application to restore the suit along with condonation of delay. So, the reason assigned by the plaintiffs is sufficient to condone the delay. It is well settled dictum of the Apex Court that the length of the delay is immaterial and they must give sufficient reason for condonation of delay. Here in this case the delay has been properly explained. Hence, I am of the view that the plaintiffs must be given opportunity to put forth his case. It is also pertinent to note that the impugned order has not been filed and already petition was allowed and cost has been paid. Therefore, instead of keeping on pending, the Civil Revision Petition is liable to be dismissed.

8. In the result, the Civil Revision Petition is dismissed with a direction, directing the Trial Court to dispose of the suit within six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

11.01.2016

Index: Yes/No
Internet: Yes/No
cse

To

The VI Additional Judge,
City Civil Court, Madras.

R.MALA. J.,

cse

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