

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.4402 of 2015
and M.P.No.1 of 2015

1.Gopal

2.Rani

3.Deivanaiyammal

4.Pachaiammal

5.Kamatchi

6.Kanniyappan

... Petitioners

Vs.

1.Kamaraj

2.Gowthaman

3.Meganathan

4.Kasinathan

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order passed in I.A.No.51 of 2014 in A.S.No.NIL of 2014 dated 13.08.2015 by the Subordinate Court, Cheyyar, Thiruvannamalai.

For Petitioners : Ms.K.M.Valsala

For Respondents : Mr.P.Mani

ORDER

Challenging the fair and final order passed in I.A.No.51 of 2014 in A.S.No.NIL of 2014 by the Subordinate Court, Cheyyar, Thiruvannamalai, the defendants have filed the above Civil Revision Petition.

2.The respondents/plaintiffs filed the suit in O.S.No.76 of 1994 for declaration and permanent injunction.

3.The suit was contested by the defendants and the trial Court decreed the suit in part, by decreeing the relief of declaration and rejecting the relief of permanent injunction. While dismissing the relief of permanent injunction, the trial Court gave liberty to the plaintiffs to file a suit for recovery of possession.

4.Aggrieved over the judgment and decree of the trial Court, the defendants preferred a First Appeal before the Subordinate Court, Cheyyar with a delay of 197 days. In the affidavit filed in support of the petition, the 8th defendant, in the suit, has stated that he was suffering from jaundice and viral fever and therefore, they could not file the Appeal in time. Further, in the affidavit, the 8th defendant has stated that he was in-charge

for the conduct of the Appeal and therefore, he was not in a position to file the Appeal on behalf of the other appellants also. The averments stated in the affidavit filed in support of the petition was disputed by the plaintiffs. The Lower Appellate Court, taking into consideration the case of both parties, dismissed the application, finding that the defendants have not produced any documents to establish that the 8th defendant was suffering from illness.

5.As already stated, the trial Court had decreed the suit in respect of declaration and dismissed the suit in respect of permanent injunction. Since the 8th defendant had stated that he was suffering from jaundice and viral fever, the Lower Appellate Court, in the interest of justice, could have condoned the delay and allowed the defendants to prosecute the Appeal on merits.

6.Since the delay is 197 days, I am of the view that the same can be condoned on payment of costs. Further, in the interest of justice, I am of the view that the defendants should be given an opportunity to challenge the judgment and decree passed in O.S.No.76 of 1994. Accordingly, the fair and decretal order passed in I.A.No.51 of 2014 in A.S.No.NIL of 2014 are set aside. The application in I.A.No.51 of 2014 stands allowed on condition

the petitioners/defendants paying a sum of Rs.2,500/- (Rupees two thousand five hundred only) to the respondents within a period of two weeks from the date of receipt of a copy of this order. It is made clear that the defendants are at liberty to pay the sum of Rs.2,500/- to the learned counsel appearing for the respondents in this Revision before this Court within the stipulated time. The Subordinate Judge, Cheyyar is directed to number the First Appeal and dispose of the same, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order.

7. With these observations, the Civil Revision Petition stands allowed. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

04.07.2016

To

The Subordinate Court,
Cheyyar,
Thiruvannamalai.

M.DURAIWAMY,J.
va

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