

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2016

CORAM

THE HONOURABLE MR. JUSTICE M.DURAIWAMY

C.R.P (NPD) No.959 of 2014
and M.P.No.1 of 2014

1. Muniswamy
2. Devaraj
3. Venkatesa Gowdu
4. Parvathi
5. Meena

.. Petitioners

vs.

1. Lakshamma
2. Puttaraju

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order in I.A.No.146 of 2009 in O.S.No.16 of 1998 on the file of the District Munsif cum Judicial Magistrate I, Hosur, dated 05.01.2012.

For Petitioners : Mr.K.Chandrasekaran

For Respondents : NA

ORDER

Challenging the order dated 05.01.2012 passed in I.A.No.146 of 2009 in O.S.No.16 of 1998 on the file of the District Munsif cum Judicial Magistrate I, Hosur, the defendants have filed the above Civil Revision Petition.

2. The Plaintiffs filed a suit in O.S.No.16 of 1998 for partition, maintenance and for other reliefs. The defendants filed their written statement and were contesting the suit. Subsequently, since the defendants failed to appear before the trial Court, they were set exparte and an exparte preliminary decree was passed on 05.03.2008.

3. Thereafter, the defendants filed an application under Order IX Rule 13 of the Code of Civil Procedure in I.A.No.146 of 2009. The plaintiffs filed their counter and opposed the said application. The trial Court, taking into consideration the case of both parties, as stated in the affidavit and in the counter affidavit, dismissed the application.

4. Though the defendants' counsel failed to appear before the trial Court in I.A.No.146 of 2009, the trial Court, had gone into the merits of the matter and dismissed the same on merits. Thereafter, the defendants filed an application in I.A.No.723 of 2011 to restore I.A.No.146 of 2009. The trial Court, by order dated 15.11.2011, allowed the application on payment of cost of Rs.500/–, thereby restoring I.A.No.146 of 2009.

5. Again, the application in I.A.No.146 of 2009 was taken up for hearing and on the second occasion also, the defendants did not appear

before the trial Court. Hence, the trial Court, by order dated 05.01.2012, dismissed the application, finding that defendants should have filed an appeal against the order dated 30.04.2009 passed in I.A.No.146 of 2009 and the order passed in the said application cannot be set aside. The trial Court observed that on the earlier occasion, the application was dismissed on merits and therefore, the application filed by the defendants in I.A.No.723 of 2011 ought to have been dismissed by the trial Court. The observation made by the trial Court is just and proper.

6. When the application in I.A.No.146 of 2009 was dismissed by the trial Court by a detailed order dated 30.04.2009, the remedy open to the defendants was to file an appeal as against the said order. Instead, they filed an application in I.A.No.725 of 2011 to restore the said application. The trial Court has erroneously allowed the said application. Further, when that fact was brought to the notice of the trial Court, the trial Court, had rightly observed that the remedy open to the defendants was to file an appeal as against the order dated 30.04.2009 passed in I.A.No.146 of 2009.

7. When the suit was pending from 1998, even after a lapse of 18 years, the dispute has not reached the finality. In fact, it has not crossed

M.DURAISWAMY,J

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the trial Court till now. In these circumstances, the dismissal of the application in I.A.No.146 of 2009 by the trial Court on 30.04.2009 is just and proper. There is no necessity for entertaining the application in I.A.No.723 of 2011 and I.A.No.146 of 2009 and hence the order passed by the trial Court on 05.01.2012 is justified. 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 hence the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

14.11.2016

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To

District Munsif cum Judicial Magistrate I, Hosur,

C.R.P (NPD) No.959 of 2014

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