

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

C.R.P.(NPD).No.2422 of 2007
and M.P.No.1 of 2007

Krishnamurthy

... Petitioner

Vs.

1.L.Bharathi (Deceased)

2.Lakshmi

3.Parvatham (Deceased)

4.Govindammal

5.Radhamani

6.M.Saraswathi

7.K.M.Balaguru

8.M.Pappathi

9.R.Gunasekaran

10.K.M.Sakthivel

11.M.Jaya

12.M.Sumathi

13.L.Boopathi

14.L.Ragupathi

... Respondents

(R1 recorded as dead and R12 to R14 brought on record as LR's of the deceased R3 vide order dated 20.04.2015 made in C.R.P.No.2422 of 2007; R2, R4 to 11 were set exparte in the Courts below, hence notice to them given up)

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 19.04.2007 made in C.M.A.No.1 of 2007 on the file of the Additional District Court/Fast Track Court No.1, Erode confirming the fair and decreetal order dated 14.03.2006 made in I.A.No.40 of 2003 in A.S.No.47 of 1992 on the file of the Sub Court, Dharapuram.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.K.Surendranath
for Mrs.P.T.Ramadevi (R12 to R14)
R2, R4 to R11 given up
R1 & R3 died - steps taken

ORDER

Challenging the judgment and decree passed in C.M.A.No.1 of 2007 on the file of the Additional District Court/Fast Track Court No.1, Erode confirming the fair and decreetal order passed in I.A.No.40 of 2003 in A.S.No.47 of 1992 on the file of the Sub Court, Dharapuram, the petitioner, who is the 2nd defendant in the suit in O.S.No.212 of 1990 on the file of the District Munsif Court, Kangeyam has filed the above Civil Revision Petition.

2.The respondents/plaintiffs filed the suit in O.S.No.212 of 1990 for specific performance, which was decreed by the trial Court. Against which, the 2nd defendant filed an appeal in A.S.No.47 of 1992.

3.Initially, the appeal in A.S.No.47 of 1992 was dismissed for default on 22.03.1993 and on the application in I.A.No.116 of 1993 filed by the 2nd defendant, the appeal was restored to file on payment of cost of Rs.300/-. Thereafter, again the appeal was dismissed for non-prosecution on 02.12.1994. Thereafter, the 2nd defendant filed another application in I.A.No.376 of 1997 to restore the appeal, which was again allowed on payment of cost of Rs.500/-. On 09.11.1999, again the appeal was dismissed for default for the 3rd time and the 2nd defendant again filed an application in I.A.No.40 of 2003. In the affidavit filed in support of the petition, the petitioner has stated that he was bed-ridden, therefore, he could not appear before the Lower Appellate Court.

4.It is needless to say that the presence of the party before the Lower Appellate Court is unnecessary. When a counsel had entered appearance and was prosecuting the appeal, he could have made the submissions before the Lower Appellate Court. Only with an aim to prolong for an indefinite period, the 2nd defendant left the appeal filed by him to be dismissed for non-prosecution on three occasions. In the affidavit filed in support of the petition also, the 2nd defendant has not given any satisfactory explanation for his non-appearance before the Lower Appellate Court. The appeal was filed in the year 1992 and the 2nd defendant cannot be given any indulgence

after a lapse of 24 years. The 2nd defendant was also given sufficient opportunities by the Lower Appellate Court to prosecute the appeal. The trial Court as well as the Lower Appellate Court has rightly dismissed the application in I.A.No.40 of 2003.

5.In these circumstances, I do not find any error or irregularity in the order passed by the Courts below. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

10.06.2016

To

1.The Additional District Court/
Fast Track Court No.1,
Erode.

2.The Sub Court,
Dharapuram.

M.DURAISWAMY,J.
va

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