

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.168 of 2016

and C.M.P.No.876 of 2016

Kottulingam

.... Petitioner

vs

1. Jayaraman

2. Ranjitham

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 27.04.2011 made in O.S.No.88 of 2010 on the file of the District Munsif, Mettur.

For Petitioner : Mr.M. Rajasekhar

ORDER

Challenging the judgment and decree passed in O.S.No.88 of 2010 on the file of the District Munsif, Mettur, the defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.88 of 2010 for permanent injunction.

3. Though the defendant engaged a counsel, subsequently, he remained absent. Therefore, the trial Court decreed the suit ex-parte on 27.04.2011. Thereafter, the defendant took out an application in I.A.No.1032 of 2013 to condone the delay of 715 days in filing the petition to set aside the ex-parte decree. The trial Court dismissed the petition on 16.09.2014. Aggrieved over the same, the defendant preferred a Civil Revision Petition in C.R.P (NPD) No.4346 of 2014 and the same was also withdrawn by the defendant/revision

petitioner on 09.12.2015. Thereafter, the present Civil Revision Petition has been filed by the defendant challenging the judgment and decree passed in O.S.No.88 of 2010.

4. Mr.M. Rajasekhar, learned counsel appearing for the revision petitioner submitted that the judgment passed in the suit in O.S.No.88 of 2010 is not in consonance with Order 20 of the Civil Procedure Code and therefore, the same is liable to be set aside.

5. When the defendant had every opportunity to file an appeal as against the judgment and decree passed in O.S.No.88 of 2010, he chose to remain silent for all these years. Now, after a lapse of five years, he has filed the present Civil Revision Petition challenging the judgment and decree passed in the suit. The defendant cannot circumvent filing of the First Appeal under Section 96 of the Civil Procedure Code by filing a revision under Article 227 of the Constitution of India. In the absence of any reason given by the defendant for not filing an appeal as against the judgment and decree

passed in O.S.No.88 of 2010, I am not inclined to entertain the Civil Revision Petition.

5. In these circumstances, the Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

22-01-2016

sr

Index:no
website:yes

To

The District Munsif,
Mettur

M. DURAISWAMY,J.,

sr

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