

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1840 of 2016

1.Murugammal

2.Salammal

3.Arumugam

4.Pangalai

5.Krishnammal

6.Chitra

... Petitioners

Vs.

Pappathi

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 28.03.2014 made in I.A.No.782 of 2013 in O.S.No.286 of 2011 on the file of the District Munsif Court, Krishnagiri.

For Petitioners : Mr.C.Munusamy

For Respondent : Mr.C.Prabhakaran

ORDER

Challenging the order passed in I.A.No.782 of 2013 in O.S.No.286 of 2011 on the file of the District Munsif Court, Krishnagiri, the defendants have filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.286 of 2011 for declaration.

3.Since the defendants failed to appear before the trial Court, an exparte decree was passed against them on 15.02.2013. Thereafter, the defendants filed an application in I.A.No.782 of 2013 to condone the delay of 167 days in filing the petition to set aside the exparte decree. The trial Court allowed the application on payment of cost of Rs.750/- payable by the defendants on or before 16.04.2014. When the application was taken up for hearing on 03.06.2014, the petitioners were called absent and since the cost was not paid, the petition was dismissed for non-prosecution. Thereafter, aggrieved over the order dated 28.03.2014, the defendants have filed the above Civil Revision Petition.

4.The learned counsel for the petitioners submitted that the defendants are willing to pay a cost of Rs.3,000/- to the respondent and that the defendants have got a very good case in the suit, therefore, the delay may be condoned on payment of cost of Rs.3,000/-.

5.Since it is a suit for declaration and in order to give an opportunity to the defendants and also in the interest of justice, I am of the view that

an opportunity can be given to the defendants to contest the suit on merits. However, the petitioners/defendants have not challenged the order dated 03.06.2014 passed by the trial Court in I.A.No.782 of 2013 dismissing the application for default.

6.The learned counsel for the respondent/plaintiff has no objection for setting aside the order passed in I.A.No.782 of 2013 and also to set aside the exparte decree passed in O.S.No.786 of 2011 for the reason that the respondent/plaintiff is a senior citizen and that in order to avoid further delay, the suit itself can be restored to file.

7.Having regard to the submissions made by the learned counsel on either side, the application in I.A.No.782 of 2013 stands allowed on condition the petitioners paying a sum of Rs.3,000/- (Rupees three thousand only) as cost to the respondent/plaintiff within one week from the date of receipt of a copy of this order. It is made clear that the petitioners are at liberty to pay the said cost of Rs.3,000/- to the learned counsel appearing for the respondent/plaintiff before this Court, in this Civil Revision Petition within the stipulated time.

8.The trial Court is directed to allow the application to be filed by the revision petitioners/defendants under Order 9 Rule 13 of the Civil Procedure Code and set aside the exparte decree passed in O.S.No.286 of 2011 to file. The District Munsif Court, Krishnagiri is directed to take up the suit in O.S.No.286 of 2011 and dispose of the same, on merits and in accordance with law, within a period of three months from the date of setting aside the exparte decree.

9.With these observations, the Civil Revision Petition stands allowed.

Index : No
Internet : Yes
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03.08.2016

To

The District Munsif Court,
Krishnagiri.

M.DURAIWAMY,J.
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