

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2344 of 2016

Vanniakula Kshatriar Temple and Nandavanam

Trust by its Trustees:-

- 1.V.Arumugam
- 2.Venugopal
- 3.A.Jayapal
- 4.Sundararajan
- 5.Ayyappan
- 6.P.Selvaraju
- 7.C.Muthu

...Petitioners

versus

- 1.Raju @ Kandasamy
- 2.Chinnaraju
- 3.Palanisami
- 4.Dhanabagiyam
- 5.Anchi
- 6.Kuppammal
- 7.Saroja
- 8.Chandran
Balan (died)
- 9.Palanisami
- 10.Nagarajan
- 12.Angammal
- 13.Sekar
- 14.Vasanthaa
- 15.Palanisamy
- 16.Thirupathi
- 17.Mathu
- 18.Raja
- 19.Santhi

20.Kanagavalli
 21.Ganesan
 22.Iyyappan
 23.Sivagami
 24.Prabakar
 25.Rajendran
 26.Rukumani
 27.Santhosh
 28.Saroja
 29.Gopal
 30.Thangamani
 31.Sornammal
 32.Lakshmi
 33.Dhanam
 34.Manjula
 35.Jagannathan

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 26.10.2015 made in C.M.A.No.6 of 2015 on the file of learned Principal District Court, Salem, returning the appeal filed against the fair and decreetal order dated 06.02.2015 made in I.A.No.24 of 2014 in A.S.No.5 of 2003 on the file of Second Additional Sub-Court, Salem.

For Petitioners : Mr.N.Manokaran

For Respondents : No appearance

ORDER

Introductory

Whether an appeal would lie under Order 43 Rule 1 (t) of the Code of Civil Procedure against an order dismissing the application for re-admission of appeal, which was dismissed for default is the core issue involved in this Civil Revision Petition filed under Article 227 of the Constitution of India.

The Facts

2. The petitioners filed a civil suit in O.S.No.424 of 1992 before the Second Additional District Munsif Court, Salem, praying for a decree of recovery of possession. The suit was dismissed by the Trial Court. The matter was taken up in appeal before the First Appellate Court in A.S.No.5 of 2003. The appeal was dismissed for default. The petitioners filed an application in I.A.No.24 of 2014 to restore the appeal. The application was dismissed. The said order was challenged before the Principal District Court, Salem in C.M.A.No.6 of 2015. The Civil Miscellaneous Appeal was returned on the ground that the appeal is not maintainable under Section 104 of the Code of Civil Procedure. Feeling aggrieved, the petitioners have come up with this Civil Revision Petition.

Submissions

3. The learned counsel for the petitioners contended that the application in question was filed under Order 41 Rule 19 of CPC. The appeal was dismissed for default and as such, the learned District Judge, Salem was not correct in returning the appeal on the ground of maintainability.

4. None appears on behalf of the respondents in spite of service

through the Counsel on record before the First Appellate Court.

Discussion and Conclusion

5. The petitioners filed the first appeal in A.S.No.5 of 2003 before the Second Additional Sub-Court, Salem. The appeal was dismissed for default. The petitioners, therefore, filed an application in I.A.No.24 of 2014 to re-admit the appeal, which was also dismissed for default.

6. The interlocutory application in question was filed under Order 41 Rule 19 of CPC.

7. Order 41 Rule 19 of CPC reads thus:-

"19. Re-admission of appeal dismissed for default.- (1) where an appeal is dismissed under Rule 11, sub-rule (2) or Rule 17, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit."

8. The interlocutory application was dismissed by the First Appellate Court by order dated 06.02.2015. It was only the said order which was put in issue before the learned Principal District Judge, Salem.

9. The learned Principal District Judge was of the view that an appeal of this nature is not maintainable in view of Section 104 of CPC.

10. While returning the appeal filed by the petitioners on the ground of maintainability, the learned Principal District Judge, overlooked the provisions of Order 43 Rule 1(t) of CPC, which provides that an appeal would lie against an order of refusal to re-admit the appeal under Rule 19 of Order XLI CPC.

11. The Statute very clearly provides for filing an appeal against an order made in a petition filed under Rule 19 of Order XLI of CPC. Such being the legal position, the learned Principal District Judge, was not correct in returning the appeal on the ground of maintainability. I am therefore of the view that the petitioners must succeed.

K.K.SASIDHARAN, J.

(svki)

12. In the result, the order dated 26.10.2015 in C.M.A.No.6 of 2015 is set aside. The petitioners are permitted to represent the appeal before the Principal District Court, Salem. The learned Principal District Judge is directed to restore the Civil Miscellaneous Appeal in C.M.A.No.6 of 2015. The learned Principal District Judge, Salem is further directed to dispose of the appeal on merits and as per law, after issuing notice to the respondents.

13. In the up shot, I allow the Civil Revision Petition. No costs.

04.11.2016

Index : Yes/No
svki

To

The Principal District Court, Salem

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