

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD) Nos.3570 & 3571 of 2016
and C.M.P.No.18208 of 2016 in
C.R.P.(NPD).No.3570 of 2016

1.Rajalakshmi

2.Karthikeyani

... Petitioners in both C.R.Ps

Vs.

K.Palanisamy

... Respondent in both C.R.Ps

Civil Revision Petitions filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 21.04.2016 made in I.A.Nos.112 & 114 of 2013 in O.S.No.318 of 2000 on the file of the Sub Court, Pollachi.

For Petitioners in both C.R.Ps : Mr.D.R.Arun Kumar

COMMON ORDER

Challenging the fair and final orders passed in I.A.Nos.112 & 114 of 2013 in O.S.No.318 of 2000 on the file of the Sub Court, Pollachi, the defendants have filed the above Civil Revision Petitions.

2.The plaintiff filed the suit in O.S.No.318 of 2000 for specific performance, alternatively for the refund of the advance amount.

3.Since the defendant remained absent before the trial Court, he was set exparte and an exparte decree was passed on 18.07.2001.

4.Subsequently, the defendant viz., M.Maheswaran had died on 12.07.2004, leaving behind the revision petitioners as his surviving legal representatives. During his lifetime, the defendant has not taken any steps to get the exparte decree set aside. He was alive for nearly 8 years after the passing of the exparte decree. Thereafter, the revision petitioners, who are the legal representatives of the deceased defendant, filed an application in I.A.No.112 of 2013 to condone the delay of 777 days in filing the application to set aside the exparte decree. In the affidavit filed in support of the petition, the revision petitioners have stated that they came to know about the exparte decree only recently, therefore, there is a delay of 777 days in filing the petition to set aside the exparte decree. Simultaneously, the revision petitioners also filed an application in I.A.No.114 of 2013 to set aside the exparte decree.

5.The petitioner has wrongly quoted the provisions of law in I.A.No.114 of 2013 as Order 9 Rule 9 of the Civil Procedure Code instead of Order 9 Rule 13 of the Civil Procedure Code to set aside the exparte decree, therefore, the application in I.A.No.114 of 2013 should be construed as an application filed under Order 9 Rule 13 of the Civil Procedure Code.

6.The trial Court, taking into consideration the case of both parties, dismissed both the applications. As against the order of dismissal of the application in I.A.No.114 of 2013 filed under Order 9 Rule 13 of the Civil Procedure Code, only an appeal is maintainable under Order 43 Rule 1 (d) of the Civil Procedure Code. The revision filed by the petitioners under Section 115 of the Civil Procedure Code is not maintainable. In these circumstances, the Civil Revision Petition in C.R.P.(NPD).No.3571 of 2016 is liable to be rejected on the ground of maintainability.

7.So far as the application in I.A.No.112 of 2013 is concerned, the defendant, who is the father of the revision petitioners did not take any steps to get the exparte decree set aside between 18.07.2001 and 12.07.2009. Thereafter, after the death of the defendant, the legal representatives of the deceased defendant have taken another 777 days in filing the application to set aside the exparte decree. When the decree was

passed on 18.07.2001, the present application to set aside the exparte decree was filed in the year 2013. The reasons stated by the defendants were rightly rejected by the trial Court.

8.In these circumstances, 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 is liable to be dismissed. Accordingly, the Civil Revision Petition in C.R.P.(NPD).No.3570 of 2016 is dismissed. The Civil Revision Petition in C.R.P.(NPD).No.3571 of 2016 is rejected as not maintainable in view of Order 43 Rule 1 (d) of the Civil Procedure Code. It is open to the petitioners to file an appeal as against the order passed in I.A.No.114 of 2013 in O.S.No.318 of 2000. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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25.11.2016

To

1.The Sub Court,
Pollachi.

M.DURAI SWAMY, J.

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