

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P. (NPD) .No.3472 of 2012

and

M.P.No.1 of 2012

1. N.Mohan

2. N. Rajagopal

3. N.Balasubramaniam

... Petitioners

- Vs -

1.P. Ravichandran

2. R.Vijayalakshmi

3. Nataraj

Sub-Registrar,
Gomangalam Sub Registrar Office,
Udumalpet Taluk,
Coimbatore.

4. The Sub-Registrar,
Sub Registrar Office,
Gomangalam, Udumalpet Taluk,
Coimbatore.

5.Tahsildar,
Taluk Office,
Udumalpet, Coimbatore.

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decretal Order dated 04.07.2012 and made in I.A.1022 of 2011 in O.S.No.227 of 2009 on the file of the District Munsif

Court, Udumalpet.

For Petitioners : Mr.T.Dhanya Kumar
For Respondents 1 and 2 : Mr.C.P.Palanichamy
for M/s.A.Madhumathi

ORDER

This revision is directed against the fair and decretal order dated 04.07.2012 and made in the application in I.A.No.1022 of 2011 in the suit in O.S.No.227 of 2009 on the file of the District Munsif Court, Udumalpet.

2. The revision petitioners herein are the defendants 1 to 3 in the suit in O.S.No.227 of 2009, whereas the respondents 1 and 2 are the plaintiffs and the remaining respondents viz., respondents 3 to 5 are the defendants 4 to 6 in the suit.

3. It appears from the records that the respondents 1 and 2 had filed the above suit as against the revision petitioners and the remaining respondents seeking the following reliefs:-

'a) Declare that the 1st plaintiff is the absolute owner over the item I of the suit property and 2nd plaintiff is the absolute owner over the item II of the suit property;

b) Restraining the defendants 1 & 3, their men, agents and heir-links from in any way alienating or encumbering the suit properties in any manner whatsoever through an order of Permanent Injunction;

c) Restraining the defendants 1 & 3 their men, agents and hire-lings from in any way interfering with the plaintiffs' peaceful possession and enjoyment of suit properties in any manner whatsoever through an order of Permanent Injunction;

d) Restraining the 2nd defendant, his men, agent and hire-lings from in any way illegally interfering with the plaintiffs' peaceful possession and enjoyment of suit properties in any manner whatsoever through an order of Permanent Injunction;

e) Directing the defendants 1 & 3 their men and successors to handover the plaintiffs' two original Sale Deeds all dated 11.09.2007 bearing Document Nos.2293/2007 & Document No.2292/2007 registered at Sub Registrar Office, Gomangalam to the plaintiffs;

f) Directing the defendants to pay the cost of the suit;''

4. The above said suit stood posted for the issuance of batta to the revision petitioners and others on 04.06.2010. On that day, the batta was not paid, and the

suit was therefore dismissed for want of batta. Thereafter, the respondents 1 and 2 herein had taken out an application in I.A.No.1022 of 2011 under Section 5 of the Limitation Act to condone the delay of 277 days in filing the application to restore the suit. This petition was strenuously contested by the 3rd revision petitioner herein which was adopted by the remaining respondents.

5. After hearing both sides, the learned Trial Judge had proceeded to allow the above said application on payment of cost of Rs.2,000/-, directing the respondents 1 and 2 to pay the above said cost within a period of 15 days from the date of order. When the cost was paid it was refused by the revision petitioners and being aggrieved by the impugned order they have approached this Court with this revision.

6. In this revision, the revision petitioners have stated that in the affidavit filed in support of the petition in I.A.No.1022 of 2011, it was stated that since the first plaintiff was suffering from breathing problem frequently and he was not able to contact his counsel as he had been continuously taking treatment. He has also stated

that he was not able to contact his counsel because of his illness and only thereafter he came to know about the dismissal of the suit, when his lawyer had informed him that the suit was dismissed for non-payment of batta on 04.06.2010.

7. On the other hand, the revision petitioners in their counter have stated that the reason assigned by the respondents 1 and 2 that the 1st plaintiff was suffering from breathing problem, was not at all correct and it was false and that the respondents 1 and 2 were not able to show the sufficient cause and hence, the petition ought not to have been allowed by the trial Judge.

8. The learned counsel for the revision petitioners has brought to the notice of this Court about the filing of another suit in O.S.No.285 of 2010 by the respondents 1 and 2 in the month of November 2010 and after filing the written statement in the said suit on 12.03.2011, the revision petitioners, had come forward with an application seeking to condone the delay with false reasons.

9. In this connection, the learned counsel for the

revision petitioners has adverted to that the suit in O.S.No.285 of 2010 was filed by the respondents 1 and 2 only after dismissal of the suit in O.S.No.227 of 2009. If really the 1st respondent was suffering and ailing from continuous cough, he would not have filed another suit, and since he was intended to abandon the claim made in the suit in O.S.No.227 of 2009, the respondents 1 and 2 had purposely failed to file an application at the earliest point of time to restore the suit.

10. The learned counsel has also produced a copy of the plaint relating to the suit in O.S.No.285 of 2010. However, the learned Trial Judge in his order after placing reliance upon the decision in **Balakrishnan v. Krishnamurthy (1999 MLJ (SC) 114)** had proceeded to allow the application applying the principle of limitation as well as liberal approach, on condition to pay a sum of cost of Rs.2,000/-.

11. Now, the learned counsel for the revision petitioners has vehemently raised objection to the impugned order contending that the theory of liberal approach should not be applied to the case in O.S.No.285 of 2010, when the same averments are made in O.S.No.227 of 2009.

12. The learned counsel for the petitioners has demonstrated that the combined reading of the plaint relating to the suit in O.S.No.227 of 2009 along with the suit in O.S.No.285 of 2010, one can easily understand that each and every paragraph of the plaint in O.S.No.227 of 2009 has been shaped out like that of the plaint in O.S.No.285 of 2010.

13. In this connection, the learned counsel for the respondents has submitted that the prayer in O.S.No.227 of 2009 is different from that of the prayer in O.S.No.285 of 2010 and the location of the property is also different and therefore, it could not be said that the averments in both the suits in O.S.No.227 of 2009 and O.S.No.285 of 2010 are similar and one and the same.

14. However, this Court finds that the suit itself was dismissed at the initial stage for payment of batta. Order 9 Rule 4 C.P.C. contemplates that the plaintiff may bring fresh suit or Court may restore the suit to file.

15. For better appreciation, it is useful to extract

the provision of Order 9 Rule 4 C.P.C., which reads as under:

''4. Plaintiff may bring fresh suit or Court may restore suit to file.

Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for [such failure as is referred to in rule 2], or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.''

16. The learned counsel for the respondents 1 and 2 has submitted that the respondents 1 and 2 being the plaintiffs have selected the second option to file an application to set the order of dismissal aside. In case, they opt for the first option to file a fresh suit, that may be subject to the law of limitation. Therefore, they have selected the second option to set aside the order of dismissal of the suit.

17. In this revision, this Court finds that the cost

imposed by the trial court can be increased considerably and ordered to be paid to the Tamil Nadu State Legal Services Authority.

18. With the above observation, this Civil Revision Petition is dismissed, confirming the order of the trial court. However, the cost imposed by the trial court is increased from Rs.2,000/- to Rs.5,000/- to be paid to the Tamil Nadu State Legal Services Authority within two weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

24.11.2016

Index: Yes / No
Internet: Yes / No
ssn

सत्यमेव जयते

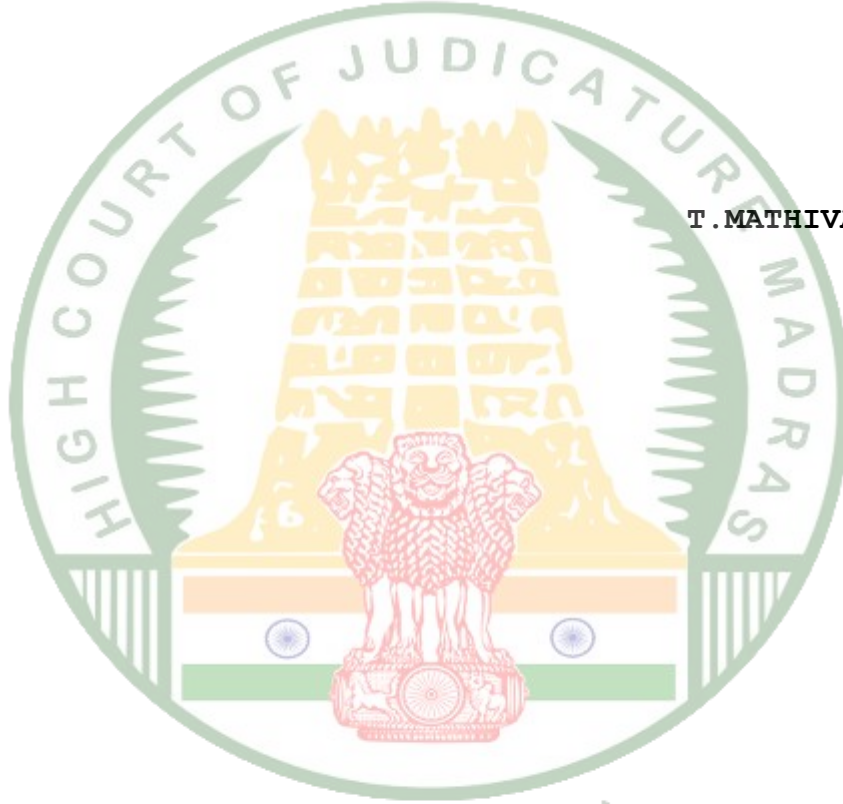
To

1. The District Munsif Court,
Udumalpet.

2. The Sub-Registrar,
Sub Registrar Office,
Gomangalam, Udumalpet Taluk,
Coimbatore.

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3.Tahsildar,
Taluk Office,
Udumalpet, Coimbatore.



T.MATHIVANAN, J. ,

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