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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2016

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CIVIL REVISION PETITION (MD) (PD)
Nos.2055 to 2059 of 2016
and C.M.P.(MD)No.9653 of 2016

1. Anna Prabhu
2. Kalaimani
3. S. Susiraj

.. Petitioners in all the petitions /
Respondents 2 to 4/ Defendants 2 to 4
vs

1. Jothi Bala
2. Marimuthu (Died)
3. Milton (Died)

.. I Respondent/Petitioner/Plaintiff
.. Respondents 2 & 3 in all the petitions /
Respondents 1 & 5/ Defendants 1 & 5

The Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal orders dated 25.09.2015 passed in I.A.Nos.1285 to 1289 of 2014 in O.S.No.5 of 2005 on the file of the Subordinate Judge, Thoothukudi.

For Petitioners ... Mr.D.Srinivasaragavan
For 1st Respondent ... Mr.G.Prabu Rajadurai

ORDER

These Civil Revision Petitions have been filed against the fair and decretal orders dated 25.09.2015 passed in I.A.Nos.1285 to 1289 of 2014 in O.S.No.5 of 2005, on the file of the Subordinate Judge, Thoothukudi.

2. Heard the learned counsel for the revision petitioners and the learned counsel for the first respondent and perused the materials available on record.

3. The first respondent herein filed a suit in O.S.No.5 of 2005 on the file of the learned Subordinate Judge, Thoothukudi seeking a direction to execute the sale deed in favour of her and also for the costs.

4. According to the petitioners, the first respondent/plaintiff said suit on the basis of agreement entered with the defendants, for the purchase of suit schedule property and paid a sum of Rs.2,15,000/- as advance to the first defendant.



The defendants filed a written statement before the Court below. Thereafter, the fifth defendant in the suit died on 31.05.2007, leaving behind his wife and two sons as legal heirs. The death of the fifth defendant was brought to the notice of the plaintiff/first respondent. On 19.06.2007, the defendants 1 to 4 filed a memo through their counsel. Thereafter, the plaintiff/first respondent filed I.A.Nos.1285 to 1289 of 2014 in O.S.No.5 of 2005 on the file of the Subordinate Judge, Thoothukudi. The said applications were returned by the trial Court and the same have been represented after complying with the defects pointed out by the trial Court for more than five occasions. Finally, the plaintiff/first respondent filed applications in I.A.Nos.1285 to 1289 of 2014 in O.S.No.5 of 2005 to condone the delay of 403, 118, 692, 215 and 384 respectively in representing the applications to bring the legal representatives of the deceased fifth defendant in the suit. The revision petitioners herein made objection in allowing the said applications. But, inspite of objection, the Court below erroneously, allowed the application by imposing a costs of Rs.500/- in each application. Aggrieved by the said order, the revision petitioners have come forward with the present Civil Revision Petitions.

5.The learned counsel for the petitioners submitted that the first respondent filed the suit against the petitioners/defendants seeking to execute the sale deed, is not maintainable either in law or on facts. Further, the petitioners have made objections in allowing the applications for the reason that the petitioners would be indulged in filing the said applications at a later stage, with a huge delay and the Court below perversely and erroneously allowed the applications. Hence, the orders passed in I.A.Nos.1285 to 1289 of 2014 have to be set aside.

6.The learned counsel for the first respondent has submitted that I.A.Nos.1285 to 1289 of 2014 have been filed by the first respondent/plaintiff before the Court below within the limitation period to bring the legal representatives of the deceased fifth respondent. The aforesaid case papers have been returned by the lower Court and the same has been complied with. Again the said papers have been returned on every occasion and at last, the returned papers have been complied with and the first respondent herein filed applications in I.A.Nos.1285 to 1289 of 2014 to condone the delay before the learned Subordinate Judge, Thoothukudi and the learned Judge rightly allowed the said applications. Hence, the revision petitions have to be dismissed.

7.It is an admitted fact that the papers in I.A.Nos.1285 to 1289 of 2014 have been filed within the limitation period and the same have been returned more than five occasions and finally, it has been filed the first respondent herein.



8.Considering the facts and circumstances of the case and also considering the submissions made by the learned counsel on either side and also in the light of the decision reported in 2013 (5) LW 20, this Court is of the considered view that if the applications are allowed no prejudice would be caused to the petitioners and an opportunity shall be given to the revision petitioners to contest the case.

9.Already, the learned trial Judge allowed the applications by imposing the costs of Rs.500/- in each petition. Apart from that, as I.A.Nos.1285 to 1289 of 2014 have been filed within the limitation period, the Court below is inclined to allow the application by imposing further costs of Rs.500/- in each petition. Hence, the first respondent herein has to pay a sum of Rs.500/- in each petition to the Tamil Nadu Mediation and Conciliation Centre attached to this Bench for conducting 40 hours Training Programmes on or before 1.12.2016.

10.Accordingly, the revision petitions are partly allowed. No costs. Consequently, connected miscellaneous petition is closed. Post the matter for reporting compliance on 2.12.2016.

Sd/
Assistant Registrar(C.S-II)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Subordinate Judge, Thoothukudi.

2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

3.The Chief Co-ordinator, Mediation and Conciliation Centre,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.G.Prabhu Rajadurai, Advocate, in SR No.74173.

C.R.P.(MD)Nos.2055 to 2058 of 2016
Date: 29.11.2016

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msm/ss3/sarJ/30.11.16/p3/5c