



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 01.12.2016

CORAM

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THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION (MD) (NPD) No.2474 of 2016
and CIVIL MISCELLANEOUS PETITION No.11681 of 2016

1.C.Mahalakshmi

2.C.Nagarathinam

.. Petitioners

VS

1.R.Nagarathinam

Chinnasamy thevar (Died)

2.C.Pavalarajan

3.C.Rajamanickam

4.C.Vaidooriyarajan

5.A.John

.. Respondents

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Ex-Order dated 18.08.2016 in E.A.No.51 of 2010 in E.P.No.233 of 2006 in O.S.No.369 of 1988 on the file of I Additional Subordinate Judge, Madurai.

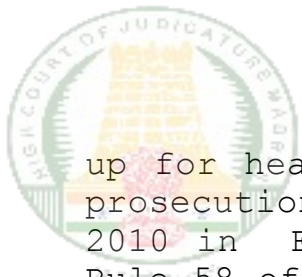
For Petitioners ... Mr.J.Jeyakumaran

ORDER

The Civil Revision Petition has been filed to set aside the Fair and Ex-Order dated 18.08.2016 in E.A.No.51 of 2010 in E.P.No.233 of 2006 in O.S.No.369 of 1988, on the file of I Additional Subordinate Judge, Madurai.

2.Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the materials available on record.

3.The first respondent herein/plaintiff filed a suit in O.S.No.369 of 1988 on the file of the learned Principal Subordinate Judge, Madurai and a final decree was passed on 30.09.2002. Thereafter, the first respondent filed an Execution Petition No.233 of 2006 in O.S.No.369 of 1988 under Order 21 Rule 11 of Code of Civil Procedure on the file of the learned I Additional Subordinate Judge, Madurai and the said E.P. was taken



up for hearing on 18.08.2016 and the same was dismissed for non-prosecution. Thereafter, the petitioners herein filed E.A.No.51 of 2010 in E.P.No.233 of 2006 in O.S.No.369 of 1988 under Order 21 Rule 58 of Code of Civil Procedure and the said E.A. was dismissed on 18.08.2016. Hence, the petitioner has come up with the present Civil Revision Petition.

4.The learned counsel for the petitioner has submitted that though the Advocate appeared before the Court below on the same day, the learned Judge had erroneously dismissed the application for non-prosecution and the same is perverse and illegal. When the matter was taken up for hearing by the learned Judge on 18.08.2016, the Court below has passed an order stating that the petitioner did not come forward to proceed with the trial though sufficient opportunity was given to him and therefore, the learned Judge dismissed the petition for non-prosecution.

5.The learned counsel further submitted that the when case was posted for enquiry and on that day, the counsel for the petitioners was present and placed the copy of the documents. But, the learned Judge, without considering the same, dismissed the case for non-prosecution and the same is illegal. Hence, the learned counsel requested this Court to allow the Civil Revision Petition.

6.Considering the facts and circumstances of the case and also considering the submissions made by the learned counsel for the petitioners, this Court is of the view that this Court could not know the factual position of the case whether the petitioner appeared before the Court on the particular date and filed the documents. Therefore, this Court is inclined to direct the petitioner herein to approach the Court below and place the said facts and seek remedy before the appropriate Forum.

7.In view of the above, the present Civil Revision Petition is not maintainable and the same is dismissed. The petitioners are directed to place the entire facts before the appropriate Forum and redress their grievance therein.

8.With the above said direction, the Civil Revision Petition is dismissed . There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(Records)

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To

1. The I Additional Subordinate Judge, Madurai.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High court, Madurai.

+1cc to M/s.J.Jeyakumaran, Advocate, in SR No.74902.

C.R.P. (MD) No.2474 of 2016

Date: 01.12.2016

cla

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