

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.185 of 2017

1.Jayalakshmi Ammal
2.Bhavani
3.Sankar
4.Pugazh
5.Elango

.. Petitioners

Vs.

Dhanalakshmi Ammal (Died)
Senthil (Died)

1.Pichai

Kamala (Died)

2.Thangam
3.Lalitha

Sundaramurthy (Died)

4.Rajarajeswari
5.Veerappa Padayachi

Subramaniam (Died)

6.Kalaiyarasi
7.Govindammal
8.Kumar

.. Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.06.2016 in C.M.A.No.3 of 2014 on the file of the learned Principal Sub-Judge, Cuddalore, confirming the fair and decreetal order dated 26.02.2014 in I.A.No.986 of 2013 in I.A.No.831 of 2010 in O.S.No.80 of 1987 on the file of the learned Principal District Munsif, Cuddalore.

For Petitioners : Mr.D.Bharathachakaravarthi
for M/S.Sai Bharath and Ilan

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 16.06.2016 in C.M.A.No.3 of 2014 on the file of the learned Principal Sub-Judge, Cuddalore, confirming the fair and decreetal order dated 26.02.2014 in I.A.No.986 of 2013 in I.A.No.831 of 2010 in O.S.No.80 of 1987 on the file of the learned Principal District Munsif, Cuddalore.

2.The respondents as the plaintiffs filed a suit in O.S.No.80 of 1987 for declaration of title and recovery of possession. The suit

was decreed. Aggrieved over the same, the defendants/petitioners herein have preferred A.S.No.211 of 1991 and the appellate Court has remanded the matter back to the trial Court for fresh trial. Against the order of remand, the plaintiffs have preferred C.M.A.No.669 of 1992, which was dismissed and the suit is taken up for trial. Since the petitioners have not appeared during the trial, the trial Court passed ex parte decree on 02.04.2009. So the petitioners/defendants have preferred an application in I.A.No.831 of 2010 to condone the delay of 199 days in filing the application for setting aside the ex parte decree. The appellate Court held that the respondents 2 and 4 were died and steps have not taken and thus, the application was dismissed for default on 02.12.2013. Aggrieved over the same, the petitioners/defendants filed I.A.No.986 of 2013 to restore I.A.No.831 of 2010. The said application was also dismissed. Challenging the same, the petitioners have preferred C.M.A.No.3 of 2014 and the same was also dismissed. Aggrieved over the same, the present revision is preferred by the petitioners/defendants.

3.Learned counsel for the petitioners would submit that the legal heirs of the deceased fourth respondent were already on

record and there is no legal heir for the deceased second respondent. Therefore, there is no necessity for taking steps to bring the legal heirs of the deceased second and fourth respondents. That factum was not considered by the trial Court. Hence, he prays for allowing the revision.

4.At the time of admission, argument of the learned counsel for the petitioners is heard in length and perused the typed set of papers.

5.The respondents as the plaintiffs filed the suit for declaration of title and recovery of possession and the suit was decreed. Aggrieved over the same, the defendants/petitioners herein have preferred A.S.No.211 of 1991, which was remanded to the trial Court for fresh trial. Against the order of remand, the plaintiffs have preferred C.M.A.No.669 of 1992, which was dismissed and the suit is taken up for trial. Since the petitioners/defendants called absent, they were set exparte and exparte decree was passed on 02.04.2009. Therefore, the petitioners/defendants filed I.A.No.831 of 2010 to condone the delay of 199 days in filing the petition for setting aside the exparte decree.

6. Now this Court has to decide whether the dismissal order in I.A.No.831 of 2010 is sustainable? On perusal of the fair and decreetal order dated 02.12.2013 made in I.A.No.831 of 2010, it reveals that the 2nd and 4th respondents were died and no steps have been taken till date and hence, the application was dismissed for default.

7. Today, learned counsel for the petitioners would submit that there is no legal heirs on behalf of the deceased 2nd respondent and the legal heirs of the deceased 4th respondent are already brought on record. So it is the duty of the petitioners to file a memo to that effect and the Court cannot suo moto come to the above conclusion. But the petitioners without doing so, kept quite all along, at the time of filing the application in I.A.No.986 of 2013 stated that 2nd respondent died without issues and the legal heirs of the fourth respondent are already brought on record.

8. A perusal of para-3 of the affidavit filed in support of the application in I.A.No.986 of 2013, it reveals that the petitioners have not mentioned as to why they did not appear before the Court, when the matter was posted on 02.12.2013 and intimate the above

fact. That aspect was rightly considered by the trial Court and held that the petitioners only with a view to drag on the proceedings have filed the series of applications. Furthermore, it is pertinent to note that the suit was decreed *ex parte*, against which, appeal was preferred by the petitioners and the suit was remitted back to the trial Court for fresh trial. At that time, the petitioners were called absent and set *ex parte* on 02.04.2009. Thereafter, the petitioners have filed I.A.No.831 of 2010 to condone the delay of 199 days in filing the petition for restoration of suit. In para-2 of the affidavit, it is stated as follows:

“2. The respondents 1 to 6 have filed the suit for declaration and for recovery of possession of the suit property. We are contesting the suit on the ground that the document executed in favour of deceased Narayanasamy is sham and nominal and he has never in possession of the suit property. I learn that the case was posted for trial on 02.04.2009. On that date, I went to Kunnam Village in connection with the personal work of mine. I have been looking after the case on behalf of the other petitioners also.”

From the above para, it is clear that the petitioners did not assign any valid reason for their non appearance.

9.Considering the aforestated circumstances of the case, I am of the view that the petitioners only with a view to drag on the proceedings have come forward with the series of applications and to prevent the plaintiffs/decreed holders to enjoy the fruits of the decree. Therefore, the decree and judgment passed by the first appellate Court does not suffer any infirmity or illegality and it is hereby confirmed. Consequently, the civil revision is dismissed.

10.In the result, the Civil Revision Petition stands dismissed.
No costs.

03.02.2017

Index:Yes/No
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To

- 1.The Principal District Munsif, Cuddalore.
- 2.The Principal Sub-Judge, Cuddalore.

R.MALA,J

kj

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