

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.P.D.No.777 of 2014

Angamuthu Padayachi (died)

Ranganathan

.. Petitioner

-Vs.-

1. Perumal

2. Muniammal

3. Mahendran

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 22.10.2013 made in C.M.A.No.2 of 2012 on the file of the Sub Court, Attur reversing the fair and final order dated 19.10.2010 made in I.A.No.280 of 2009 in O.S.No.72 of 2003 on the file of the District Munsif Court, Attur.

For petitioner

... Mr.T.Murugamanickam

For Respondents-1&3

... Mr.R.Vasudevan

For Respondent-2

... Served-No Appearance

ORDER

The revision is filed by the legal heir of the sole plaintiff for restoration of the suit, which was dismissed for default for not taking steps on the death of the sole plaintiff.

2. Even before the application in I.A.No.280 of 2009 in O.S.No.72 of 2003 was filed under Order IX Rule 9 C.P.C for restoration, the learned District Munsif, Attur has allowed the application stating that after demise of the sole plaintiff due to illness, there was a delay in taking steps and sufficient reasons were shown to restore the suit. Therefore, the application was allowed on condition. Aggrieved by the same, the respondents / defendants had preferred C.M.A.No.2 of 2012. The learned Appellate Judge found that there was a delay of 2 days and the reasons for the said delay was not properly explained and hence, allowed the appeal and dismissed the said interlocutory application.

3. The application for restoration was numbered and was also allowed by the trial Judge on payment of costs. Therefore, it has to be deemed that the trial Judge had exercised his discretion and condoned

the delay, if any. However, the learned Sub Judge, Attur has dismissed the same, by interfering with the order of the trial Judge.

4. As the delay is only 2 days, which is only a procedural defect and it is also condoned by the trial Judge, the same need not have been interfered with the appellate Court. Hence, the judgment and decree of the Appellate Court are set aside and the Civil Revision Petition is allowed, restoring the order passed in I.A.No.280 of 2009 by the trial Court. Considering the fact that the suit is of the year 2003, the learned District Munsif, Attur is directed to complete the trial and pronounce the judgment on or before 30.04.2017.

5. With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, consequently connected miscellaneous petition is closed.

02.01.2017

srn

PUSHPA SATHYANARAYANA.J

srn

To

1. The Sub Court, Attur
2. The District Munsif Court, Attur

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