

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.2006 of 2008

and

MP.No.1 of 2008

1.V.R.Subramaniam

2.V.Suseela

... Appellants/Plaintiffs

Vs.

1.Sathish

2.Raja

3.C.Subramaniam

4.Nallammal

5.Samiyathal

6.Rasathi

... Respondents/Defendants

Civil Miscellaneous Appeal has been filed under Order 43 Rule 1(c) of Civil Procedure Code to set aside the order dated 3.10.2007 passed in I.A.No.128 of 2006 in O.S.No.872 of 1994 on the file of the I Additional District Court, Erode.

For Appellants : Mr.A.K.Kumarasamy, Senior Counsel
for S.Kaithamalai Kumaran

For Respondents : Mr.C.E.Pratap for R1 & R2
Mrs.P.T.Ramadevi for R3
Mr.Sundaravadhanan for R4 to R6

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the order, dismissing an application in I.A.No.128 of 2006 in O.S.No.872 of 1994. The said IA.No.128 of 2006 was filed under Order IX Rule 9 of Code of Civil Procedure, seeking restoration of suit that was dismissed for default on 14.08.2002.

2. The application is filed in the year 2006 without an application for condonation of delay in filing the application for restoration of the suit. The reason given for default was that the applicant / 1st petitioner was ill and there is no reason assigned for not filing the application within the statutory time limit of 30 days. Though the affidavit is sworn on 13.09.2002, the application appears to have been filed much later i.e., beyond the period of 30 days.

3. It is also seen that the first defendant in the suit had died and applications were filed seeking to condone the delay in filing the application to set aside the abatement caused by the death of the first defendant to set aside the abatement and to bring on record his legal heirs. It appears that first application seeking condonation of delay in filing the application to set aside the abatement was dismissed for non-payment of batta.

4. The application in IA.No.128 of 2006 was resisted by the respondent contending that the present application itself is not maintainable and the application seeking to set aside abatement and bring on record the legal heirs were pending on the date when the application for condonation of delay and seeking set aside abatement in IA.No.567 of 2001 was dismissed on 14.08.2002.

5. Before the Court below while arguing the application it was pointed out that the application has been wrongly filed for restoring the suit, actually it has been filed for restoration of application in IA.No.567 of 2001 which was dismissed for default on 14.08.2002. Taking into account all these factors, the learned trial Judge concluded that the petitioner/ appellant has been filing one petition after another and has been successfully dragging on the suit for specific performance for more than 20 years and the said action on the part of the petitioner/ appellant amounts to abuse process of Court. Hence, the learned trial Judge dismissed the application.

6. I have heard Mr.A.K.Kumarasamy learned Senior counsel appearing for Mr.Kaithamalai Kumaran for appellants and Mr.Sundaravadhanan, learned counsel appearing for the respondents 4 to 6 and Mr.C.Pratap, learned counsel appearing for respondents 1 and 2 and Mrs.P.T.Ramadevi, learned counsel appearing for 3rd respondent.

7. Mr.A.K.Kumarasamy, learned Senior Counsel would contend that being plaintiff, and having entered into an agreement of sale in the year 1992, the plaintiff should be given an opportunity to contest the proceedings. From the facts stated above it is very clear that the plaintiff has not shown diligence in prosecuting the suit and there was a default at every stage. However, no attempt is made to explain the default even in the affidavit filed in support of IA.No.128 of 2006, infact IA.No.567 of 2001 which was filed seeking condonation of delay of 655 days in filing an application to set aside the abatement caused by the death of the first defendant, was dismissed for default for non payment of batta nearly after a year in 2002 and the application to restore it was filed nearly after 4 years in 2005 and the same was re-presented by a delay of about 480 days. The above conduct of the plaintiff would only show that he is not diligent in prosecuting the suit and he does not deserve any

sympathy in the hands of this Court. Hence, this Court is not inclined to interfere with the order of the trial Court.

8. Therefore, this Civil Miscellaneous Appeal is dismissed, confirming the fair and decretal order of the trial Court in IA.No.128 of 2004. However, there will be no orders as to cost in this appeal. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dsa

To

The I Additional District Judge,
Erode.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.C.E.Pratap, Advocate, S.R.No.54133
+1cc to Mrs.P.T.Ramadevi, Advocate, S.R.No.54061

C.M.A.No.2006 of 2008
and
M.P.No.1 of 2008

SSI (CO)
CA(21/08/2017)

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