

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Civil Revision Petition (NPD) No.3206 of 2016
and
C.M.P.No.16259 of 2016

K.Y.Thimmaiah @ Ellappa @ Annaiyah (late)

1.Krishnappa

2.Jeyalakshmi

3.Jeeva Jothi

4.Nethravathi

5.Vetha

6.Minor Nithyananda Moorthy

2nd respondent Jeyalakshmi

is the guardian of 6th respondent.

... Petitioners

..Vs..

Aswathappa

... Respondent

Prayer: This Civil Revision Petition has been filed under Section 115 of the CPC, 1908, against the order and decretal order dated 31.08.2016 passed in I.A.9 of 2016 in I.A.22 of 2016 in A.S.23 of 2007, on the file of the Sub-Court, Hosur.

For petitioners : Mr.Lakshminarayanan

For Respondent : Mr.R.Jayaprakash

ORDER

Challenging the order dated 31.08.2016 passed in I.A.9 of 2016 in I.A.22 of 2016 in A.S.23 of 2007, on the file of the Sub-Court, Hosur, the present

Revision Petition has been filed.

2. The Plaintiff/respondent herein filed a suit in O.S.No.105 of 2003 before the District Munsif Court, Denkanikottai, for the reliefs of redeeming the mortgaged suit properties to the 1st defendant by paying the amount of Rs.6200/- to the defendant and to execute deed of document, to redeem the mortgaged properties and for delivery of possession. The aforesaid suit was originally dismissed on 20.10.2006 and subsequently, challenging the said judgment and decree, the plaintiff/respondent herein, filed an appeal in A.S.No.23 of 2007 before the Lower Appellate Court. The Lower Appellate Court has set aside the judgment and decree passed by the trial Court and remanded the matter to the trial Court to decide the suit afresh on 10.02.2010. Challenging the said judgment of the Lower Appellate Court, the petitioners herein/defendants have filed an appeal before this Court in C.M.A.No.1280 of 2010. By judgment dated 12.08.2015, this court has allowed the appeal and the order of remand of lower appellate court is set aside and the Appeal Suit No.23 of 2007 was remitted to the Lower Appellate Court, to consider the matter afresh on merits.

3. Subsequently, the respondent/Plaintiff herein filed I.A.No.22 of 2016 in O.S.No.105 of 2003, seeking permission to amend the plaint. According to the

learned counsel appearing for the Revision Petitioners, when I.A.No.22 of 2016 was posted for hearing, the counsel for the petitioners herein who are the respondents/defendants in I.A.22 of 2016 was unable to appear before the Court on 04.04.2016, as fact that he met with an accident and his leg was fractured. However, the Lower Appellate Court, without considering the said request made by the Junior counsel before the Court below, allowed the said application on 04.04.2016. Therefore, the Revision Petitioners filed an application in I.A.9 of 2016 seeking to set aside the exparte order passed by the Lower Appellate Court in I.A.22 of 2016 on 11.4.2016, however, the Lower Appellate Court dismissed the aforesaid application, without considering the Revision Petitioner. Challenging the said order, the present Civil Revision Petition has been filed.

4. The learned counsel for the Revision Petitioners would submit that the court below has not considered the genuine reasons stated by the Revision Petitioners/defendants and especially when the request made on behalf of counsel for the respondents/defendants in I.A.No.22 of 2016 seeking time to file counter on account of leg fracture caused to the Revision Petitioner and the same was also admitted by the learned counsel for the Plaintiff. Despite the same, the Lower Appellate court, has dismissed the said application.

5. As stated earlier, the respondent/plaintiff has filed suit in O.S.No.105 of 2003, for redemption of the suit properties from the defendants and also for delivery of possession. The said suit was dismissed by the trial court and thereafter, the Plaintiff filed A.S.No.23 of 2007 before the Lower Appellate Court, which was remanded back to the trial court, however, at the instance of the defendants/revision petitioners herein, this Court in C.M.A.No.1280 of 2010, set aside the order passed by the Lower Appellate Court and remanded the appeal suit and by directing the Lower Appellate Court to consider A.S.No.23 of 2007 on merits. At this stage, the Plaintiff/respondent has filed I.A.No.22 of 2016 seeking to amend the Plaint, which was allowed by the Lower Appellate Court rejecting the inspite of request made by the respondents/defendants seeking time to file counter. The respondents herein filed the present application in I.A.No.9 of 2016 to set aside the exparte order dated 11.04.2016 and the same was dismissed by the Court below. In such circumstances, this court is of the view that an opportunity shall be granted to the Revision Petitioners to file counter in I.A.No.22 of 2016, before the Lower Appellate Court and the same shall be considered by the Lower Appellate Court on merits and in accordance with law.

6. In view of the foregoings, this Court is inclined to interfere with the order of the Lower Appellate Court and set aside the order passed in the instant application in I.A.No.22 of 2016 in A.S.No.23 of 2007, on the file of the Sub-Court, Hosur.

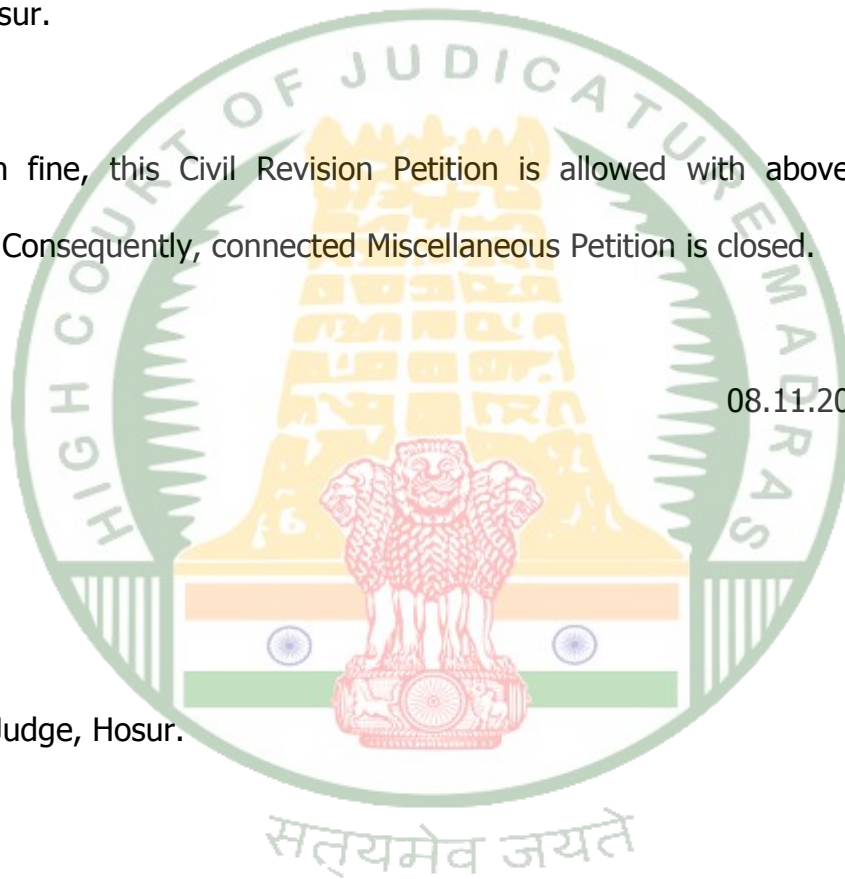
In fine, this Civil Revision Petition is allowed with above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

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To

The Sub Judge, Hosur.



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D.KRISHNAKUMAR,J.,

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