



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WEB COPY

C.R.P. (MD) No.1060 of 2017

and

CMP (MD) No.4714 of 2017

1.Arumugathammal

2.Velammal

... Petitioners

Vs.

S.Manoharan

... Respondent

PRAYER: The Civil Revision Petition filed under Section 115 of CPC, to set aside the order and decreetal order made in C.M.A.No 2 of 2015 on the file of the 1st Additional Subordinate Judge, Nagercoil, Kanyakumari District on 21.02.2017.

For Petitioners :Mr.T.Selvakumaran

For Respondent :No Appearance

ORDER

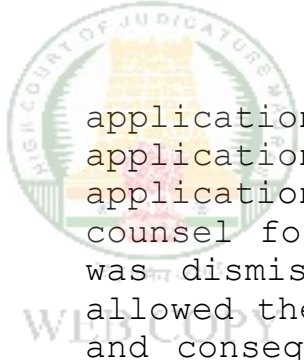
This Civil Revision Petitions in CRP (MD).No.1060 of 2017 has been filed, under Section 115 of CPC, to set aside the fair and decreetal order made in C.M.A.No 2 of 2015 on the file of the 1st Additional Subordinate Judge, Nagercoil, Kanyakumari District on 21.02.2017.

2.Heard the learned counsel for the revision petitioners. No representation for the respondent.

3.This Revision Petition arising out of the order passed by the first appellate Court in C.M.A.No.2 of 2015, wherein, the first appellate Court has dismissed the appeal filed against the order passed by the trial Court in the application filed under order 9 rule 13 by the defendants.

4.The brief facts leading to this revision petition is as under:

The O.S.No 77 of 2011 filed for declaration of title was allowed and ex-parte decree was passed on 09.08.2011. The defendant who is the revision petitioner herein has filed the



application to set aside the ex-parte decree along with the application to condone the delay of 517 days in filing the application under order 9 rule 13. It is admitted by the learned counsel for the respondent that the condonation delay application was dismissed by the trial Court, but, in CRP, High Court has allowed the Section 5 application filed by the revision petitioner and consequentially order 9 rule 13 application in I.A.No.342 of 2014 and 343 of 2014 was taken on file and decided by the trial Court. Since the revision petitioner was not successful before the trial Court, he approached the appellate forum in CMA.No.2 of 2015, wherein, the first appellate Court has dismissed the CMA.No. 2 of 2015.

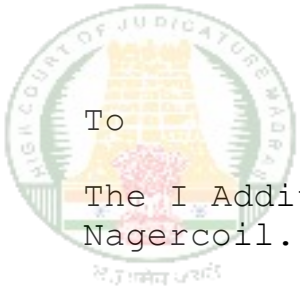
5. On perusal of the record and the impugned order it appears that due to inadvertence, the lower appellate Court has not taken note of the subsequent event namely, the application filed by the revision petitioner under section 5 of the Limitation Act and the order passed by the High Court in CRP.No. (PD) (MD) No.633 of 2015. Due to the inadvertent omission of this particular fact, the lower appellate Court has dismissed the CMP.No 2 of 2015 holding that the application under order 9 rule 13 to set aside the ex-parte decree has been filed with the delay of 517 days, but without application to condone the said delay. It is fairly conceded by the counsel for the respondent when the said observation is contrary to the fact. The lower appellate Court has gone wrong in holding that the application to set aside the ex-parte decree not accompanied with the application to condone the delay in filing the said application. It is also brought to the notice of this Court that the defendant has filed his written statement along with delay condonation application and petition to set aside the ex-parte decree. Therefore, this Court is of the view that the revision petition is liable to be allowed with direction to the trial Court to take the written statement filed by the defendant on file and frame issues expeditiously and dispose of the suit as early as possible, probably, within a period of four months from the day of receipt of a copy of this order.

6. Accordingly, with the above said directions, this Civil Revision Petition is allowed. No Costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar



To

The I Additional Subordinate Judge,
Nagercoil.

+1 cc to Mr.R.Murugan , Advocate in SR.No. 58608

+1 cc to Mr.T.Selvakumaran , Advocate in SR.No. 58738

mm/dsk

AE/JC/SAR3/16.06.2017/3P/4C

C.R.P. (MD) No.1060 of 2017
and
CMP (MD) No.4714 of 2017
06.06.2017