

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 07.09.2018
JUDGMENT PRONOUNCED ON : 12 .11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.2220 of 2013

Lalitha Badhri

.....Appellant/Plaintiff

Vs

- 1.K.V.Alagesan
- 2.A.Prasanna Venkatesh
- 3.N.Jeyalakshmi
- 4.K.V.Ganesan
- 5.Minor. G. Priyadhrshini
Rep by her father & Natural Guardian K.V.Ganesan,
- 6.Dhanalakshmi
- 7.K.V.Ramakrishnan
- 8.Minor. V.R. Dhivy Roopa
Rep by her father & Natural Guardian K.V. Ramakrishnan
- 9.Minor.V.R.Santhosh
Rep by his father & Natural Guardian K.V. Ramakrishnan
- 10.K.V.Jayaprakash
- 11.Minor.Nishanth
Rep by his father & Natural Guardian K.V. Jeyaprakash
- 12.Minor. J.P.Mithun
Rep by his father & Natural Guardian K.V. Jeyaprakash
- 13.M.K.Venkatachalam
- 14.Karur Vysys bank Limited,
Nammakkal Branch,
Rangar Sannadhi Street,
Namakkal Taluk & District.Respondents/Defendants

Prayer: Civil Miscellaneous Appeal is filed under Order 43 Rule (1) (C) of C.P.C. against the fair and decreetal Order dated 08.03.2013 made in I.A.No.620 of 2012 in O.S.No. 21 of 2010, on the file of the (Principal District Court) Namakkal.

For Appellant : Mr. P. Mathivanan

For Respondents : No Appearance

J U D G M E N T

Aggrieved over the order dated 08.03.2013 passed by the learned Principal District Judge Nammakkal, in I.A.No. 620 of 2012 in O.S.No. 21 of 2010, the petitioner who is the plaintiff in the above suit has been approached this Court with this present Civil Miscellaneous Appeal.

2) The petitioner is the power of attorney of plaintiff in O.S.No. 21 of 2010.

3) In the Court below the petitioner filed a suit against the respondents seeking the relief of partition. When the suit is listed in the special list, the plaintiff has not been appeared before the trial Court. Thereby, the Learned Principal Sessions Judge dismissed the suit without cost.

4) Against which, the petitioner filed an interim application under order 9 Rule 4 of Civil Procedure Code praying to set aside the dismissal order passed by the trial Court and for restoration of the suit. After, elaborate enquiry the Court below dismissed the application filed by the petitioner. Aggrieved over the same the present appeal is before this Court.

The case of the petitioner is as follows:-

5) In the affidavit filed before the Court below the power holder of the plaintiff has stated that on 12.09.2012 when the suit was posted for trial, he met an accident and sustained fracture in his right leg. Thereby, he was not in a position to attend the Court. But the Trial Court without considering the said aspects dismissed the suit. According to him, absence of the plaintiff on 12.09.2012 is not voluntary.

6) Opposing the claim made by the Plaintiff, 14th respondent in this application filed a counter before the trial Court stating that the reason now stated by the petitioner is false. In order to, substantiate the reason stated by the petitioner, he is not produced any relevant documents to show his bonofideness. After, filing an application on 25.09.2012 he produced the medical certificate dated 30.09.2012 for setting aside the dismissal order. He would further averred in the earlier occasions on 03.11.2011 itself the suit was dismissed and thereafter, the said dismissal order was set aside and the suit was restored to file. Now, again the petitioner leave the suit for dismissal and filed this application. According to him, in order to defeat the right having by the 14th respondent, after colluding with the other respondents the suit has been filed by the plaintiff after mentioning false reason.

7) The learned Counsel appearing for the appellant would contend in the trial Court in order to show the sufficient cause Ex.P.1 which was the medical certificate issued in favour of the appellant has been filed. Even after seeing the said certificate, the trial Court dismissed the application, which is erroneous in law.

8) Per contra, the learned counsel appearing for the respondents would contend that without showing sufficient cause only in order to prevent the action initiated by the 14th respondent all the respondents colluded with plaintiff and filed this application. He would further contend that the order passed by the Court below is a well considered order, and does not need any interference.

9) Now on going through the order passed by the Court below, for the reason, mainly on considering the previous contact of the petitioner, the learned Principal District Judge dismissed the application filed by the appellant. It is not disputed on the side of the plaintiff that before passing the order of dismissal, this case was included in the special list for hearing dated 08.06.2011. Subsequent to that, the case is adjourned till 29.06.2011 and thereafter continuously adjourned for 28.07.2011 and to the date of 07.09.2011, thereafter, on 03.11.2011 the learned Principal Sessions Judge dismissed the suit. Subsequently, for setting aside the said dismissal order, appellant herein filed an application in I.A. No. 655 of 2011, and after allowing the same the suit has been again listed in the special list for the hearing on 14.03.2012. Meanwhile after restoring the suit, plaintiff gave power of attorney to one Chandra Sekaran for proceeding the suit. The said application was allowed and after made amendment, the suit was again posted on 25.07.2012 for trial and on 12.09.2012 the case was dismissed and consequently the application filed by the petitioner also dismissed. During the time of submissions made by the learned Counsel appearing for the appellant, he relied on the judgment reported in 2009 (2) CTC 132 in which it was held as follows:-

"Under Order 9, rule 13, C.P.C an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any "sufficient cause" from appearing when the Suit was called on for hearing. Unless "sufficient cause" is shown for non appearance of the defendant in the case on the date of hearing, the Court has no power to set aside an ex parte decree."

Further, he relied on the judgment reported in 1992 private 120 in which it was held as follows:-

"with regard to the merits of the case, learned District Judge dismissed the application considering the previous conduct of the parties. The previous conduct of parties or that of the advocate need not be looked in to all while disposing of an application filed under Order 9 Rule 13 C.P.C.O.9, R.13, C.P.C."

So, following the principles set out in the above judgments. It is the duty of the plaintiff to show the sufficient cause for not attending the Court, for the day on which, the case has been posted for trial, at least he should have informed his counsel for representing the inability in attending the Court. In this case, the plaintiff has not stated the details of hospital in which, he got treatment. Further, he has not stated that the details of accident which has been met by him. It shows this application has been filed by the petitioner without sufficient cause. However, it is relevant to see the other circumstances for disposing this application.

10) Admittedly, the suit has been filed by the plaintiff for the relief of partition. According to the pleadings set out in the plaint, the suit mentioned property is the ancestral property of the plaintiff, further, the plaintiff is a unmarried girl, she filed a suit asking partition in her family property. In the said circumstances, if the suit is not adjudicated after hearing either side, it would destroy the rights of the plaintiff, considering the said circumstances. I am of the considered view, to issue some direction to the trial Judge for disposing the suit within the appropriate period.

11) In the result, this Civil Miscellaneous Application is allowed on payment of cost Rs.5,000/- to the Chief Justice Relief Fund, on or before 29.11.2018, on payment of cost in the above such period, the order passed by the learned Principal District Judge Namakkal, in I.A.No. 620 of 2012 in O.S.No. 21 of 2010 dated 08.03.2013 is set aside and the trial Court is directed to restore the suit on file and dispose the same within a period of 3 months from the date of receipt of a copy of the order.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Principal District Court,
Namakkal.

2.The Section Officer,
VR Section,
High Court, Madras.

3.The Sub Assistant Registrar,
Account Section,
High Court, Madras.

+1cc to Mr.P.Mathivanan, Advocate, S.R.No.77154

C. M. A. No.2220 of 2013

RSV(CO)

rrs 04/12/2018



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