

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD).No.1403 of 2018

Velusamy (died) by LRs

1. Saraswathi
2. V.Krishnaraj
3. Santi

... Petitioners

Vs.

1. Rathinasamy
Palaniammal (Died)
2. Aruchamy

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order made in I.A.No.79 of 2017 in O.S.No.379 of 2008, dated 21.12.2017 on the file of the District Munsif, Pollachi.

For Petitioners : Mr.C.Veerarahavan

सत्यमेव जयते

ORDER

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The relief sought for in this revision is to set aside the fair and decreetal order made in I.A.No.79 of 2017 in O.S.No.379 of 2008, dated 21.12.2017, on the file of learned District Munsif, Pollachi.

2. The suit in O.S.No.379 of 2008 is filed against the respondents for partition and for permanent injunction before the learned District Munsif, Pollachi.

3. During the pendency of the suit, the 2nd plaintiff in O.S.No.379 of 2008, died on 17.06.2014. The said suit was dismissed for default on 27.03.2015. Hence, the legal heirs /the revision petitioners herein filed an Interlocutory Application under Order 9 Rule 9 r/w Section 151 of Code of Civil Procedure in I.A.No.79 of 2017 in O.S.No.379 of 2008 to restore the suit.

4. The legal heirs of the 2nd plaintiff filed the petition for condoning the delay of 240 days in filing the application for setting aside the abatement and to bring them on record as legal heirs of the deceased 2nd plaintiff.

5. The trial Court passed the conditional order, imposing a sum of Rs.500/- has to be paid by the revision petitioners to the respondents, in which the revision petitioners failed to submit the memo on the date, when the case was listed. When the matter was called before the trial Court, none appeared on behalf of either side, since the condition imposed by the trial court has not been complied with. Hence, the application was dismissed.

6. Aggrieved against the said order dated 21.12.2017, the Revision petitioners are before this Court with the present civil revision petition.

7. Heard the learned counsel for the petitioners and perused the available records.

8. A perusal of records, there is no fault on the part of the trial court. However, the suit is for partition and separate possession. Due to the fault on the part of the counsel, the parties should not be affected. The petitioners paid the cost to the counsel within the stipulated time fixed by the Court below and the counsel failed to produce cost paid receipt before the Court. In the interest of justice, the time for producing the cost paid memo is extended. Hence, the revision petitioners are directed to file the memo along with the cost paid receipt before the trial Court.

9. In this case, the entire fault is on the part of the counsel who appeared before the trial Court on behalf of the revision petitioners, Hence, the parties are at liberty to recover the cost from their counsel.

P.VELMURUGAN, J.,

vum

10. The revision petitioners are directed to file the cost paid memo along with the application for extension of time under section 148 of code of civil procedure. In case, if the revision petitioners file any such application along with the cost paid memo, the trial Court is directed to consider the same liberally.

11. With the above observations, this Civil Revision Petition is allowed.

No costs.

23.04.2018

Index:Yes/No
Speaking order / Non speaking order
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To
The District Munsif Court,
Pollachi

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