

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD).No.309 of 2018

and C.M.P.No.3741 of 2018

1. Dr.C.Kalaiselvi
2. Dr.S.Cadir

.... Petitioner

Vs.

1.V.S.Rathi
2. V.T.Palaniammal
3. S.Sathish Kumar

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C, praying to set aside the fair and final order passed in I.A.No.456 of 2016 in O.S.No.191 of 2013 dated 26.10.2017 by the learned Principal Subordinate Judge, Erode.

For Petitioners : Mr.C.Sriranjani

For Respondents : Mr.V.S.Kesavan

ORDER

The relief sought for in this revision petition is to set aside the fair and decretal order made in I.A.No.456 of 2016 in O.S.No.191 of 2013 dated 26.10.2017 on the file of the learned Principal Subordinate Judge, Erode.

2. The suit in O.S.No.95 of 2012 filed by the respondents before the learned Principal Subordinate Judge, Erode based on the pronote. The defendant/petitioners in O.S.No.95 of 2012 has settled certain properties in favour of her son, based on which the plaintiff/respondent filed a suit before the learned Subordinate Judge, Sattur, Sivakasi for declaration and the suit was decreed as exparte. Subsequently, the father of the third respondent filed a suit n O.S.No.191 of 2013 before the learned Principal Subordinate Judge, Erode for declaration and permanent Injunction.

2. Subsequently, the defendants/revision petitioners filed an Interlocutory application under Section 5 of the Limitation Act in I.A.No.456 of 2016 in O.S.No.191 of 2013 before the learned Principal Subordinate Judge, Erode to condone the delay of 319 days in filing the petition under Order IX Rule 13 of C.P.C.

3. In the meanwhile, the suit in O.S.No.191 of 2013 was renumbered as O.S.No.191 of 2013 and was transfered along with I.A.No.456 of 2016 which is filed under Section 5 of the Limitation Act. After elaborate discussion, the trial Court dismissed the application in I.A.No.456 of 2016.

4. Aggrieved against the said order dated 26.10.2017, the revision petitioners/defendants are before this Court.

5. Heard both sides and perused the materials available on record.

6. On a perusal of records, it is seen that it is purely a misunderstanding of the counsel who appeared before the trial Court, for which the parties should not be punished. In the interest of justice, the order passed by the trial Court is liable to be set aside.

7. In this case, the trial Court should have dismissed the application only as against R3 (deceased)/third defendant but not in entirety. Regarding the third plaintiff, though there is no reason to interfere with the order passed against the third plaintiff, it is the duty of the counsel to advise the party, since there is legal proceedings involved, this Court cannot blame the party.

8. Therefore, under these circumstances, to meet out the needs of the parties, in the interest of justice and in order to give an opportunity to the revision petitioners, the revision petitioners are directed to file an appropriate application to bring the legal representatives of the deceased/ plaintiff. In

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case the revision petitioners filed any application to amend the petition in I.A.No.456 of 2016 in O.S.No.191 of 2013, the trial Court is directed to take a liberal view and dispose of the matter in accordance with law.

9. With the above observation, the revision petition is disposed of. Consequently, connected Miscellaneous petition is closed. No Costs.

19.06.2018

Index:Yes/No

Speaking order / Non speaking order

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To

The Principal Subordinate Judge,
Erode.

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