

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) Nos.1725, 1727 and 1728 of 2010

1.Ramasamy (Died)
2.Amirthalingam
3.Velmurugan

... Petitioners in all CRPs

Vs.

1.Banumathi
2.Purushothaman
3.Viswanathan
4.Pugaleswaran

... Respondents in all CRPs

Prayer in all CRPs: Civil Revision Petition filed under Under Section 115 of Civil Procedure Code, against the fair and decretal order passed by the Learned District Munsif, Jayankondam dated 08.12.2009 in I.A.No.257/2009 in O.S.No.189/2000, against the fair and decretal order passed by the Learned District Munsif, Jayankondam dated 07.12.2009 in I.A.No.855/2009 in O.S.No.189/2000, against the fair and decretal order passed by the Learned District Munsif, Jayankondam dated 08.12.2009 in I.A.No.856/2009 in O.S.No.189/2000.

For Petitioners in all CRPs : Mr.G.Ilamurugu

For Respondents in all CRPs : No appearance

COMMON ORDER

Three CRPs namely CRP (NPD) Nos.1725 of 2010 has been filed by the petitioners challenging the order of dismissal dated 08.12.2009, passed in I.A.257 of 2009 in O.S.No.189 of 2000 and CRP (NPD) No.1727 of 2010, has been filed challenging the order of dismissal dated 07.12.2009 in I.A.No.855 of 2009 in O.S.No.189 of 2000 and CRP (NPD) No.1728 of 2010, has been filed challenging the order of dismissal dated 08.12.2009, passed in I.A.No.856 of 2009 in O.S.No.189 of 2000.

2.I.A.No.257 of 2009 in O.S.No.189 of 2000 was filed by the petitioners to implead themselves as the legal representatives of their deceased father under Order 22 Rule 3 CPC. I.A.No.855 of 2009 in O.S.No.189 of 2000 was filed by the petitioners to condone the delay of 592 days in filing the application to set aside the abatement under Section 5 of the Limitation Act. I.A.No.856 of 2009 in O.S.No.189 of 2000 was filed by the petitioners to set aside the abatement under Order 22 Rule 9 CPC.

3.The case of the petitioners is that originally their father Mr.Ramasamy filed a suit for a declaration of title and for injunction against the respondents on 17.07.2000, before the District Munsif Court, Jayankondam.

4.The written statement was also filed by the respondent in the said suit and the suit was listed for trial on 04.02.2005. Since the petitioners' father, who was the plaintiff, in the suit did not appear before the Court on 04.02.2005, the suit was dismissed for default. On 28.02.2005, within the 30 days period, I.A.No.149 of 2007 was filed by the petitioners' father who was the plaintiff in the suit for restoration of the suit under Order IX Rule 9 of CPC.

5.On 28.09.2007, the petitioners' father died. Subsequent to the death of the petitioners' father, who was the plaintiff in the suit, I.A.No.149 of 2007 was allowed by the Trial Court, on condition that the plaintiff shall pay a sum of Rs.750 to the respondents on or before 22.01.2008. Since the cost was not paid on or before 22.01.2008, I.A.No.149 of 2007 came to be dismissed by the Trial Court.

6.Thereafter, I.A.Nos.257 and 258 of 2009 was filed by the petitioners, who are the sons of the deceased plaintiff, praying to implead themselves as the legal representatives of the deceased plaintiff and to receive the cost imposed under the order passed in I.A.No.149 of 2007 under Section 148 read with 151 of CPC. The respondents also filed their counter statement in I.A.Nos.257 and 258 of 2009, stating that without setting aside the abatement, I.A.Nos.257 and 258 of 2009 are not maintainable.

7. Thereafter, on 31.08.2009, I.A.Nos.855 and 856 of 2009 were filed by the petitioners seeking for condonation of delay in filing an application to set aside the abatement and the other application to set aside the abatement. The respondents also filed their counter statement in I.A.Nos.855 and 856 of 2009.

8. I.A.No.257 of 2009 in O.S.No.189 of 2000 seeking to implead the petitioners as legal representatives of the deceased plaintiff came to be dismissed by the Trial Court on 08.12.2009. I.A.No.855 of 2009 in O.S.No.189 of 2000 seeking to condone the delay of 592 days in filing the application to set aside the abatement under Section 5 of the Limitation Act came to be dismissed by the Trial Court on 07.12.2009. I.A.No.855 of 2009 seeking for condonation of delay in filing an application to set aside the abatement and I.A.No.856 of 2009 in O.S.No.189 of 2000 seeking to set aside the abatement under Order 22 Rule 9 of CPC came to be dismissed by the Trial Court on 08.12.2009.

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9. Aggrieved by the order dated 08.12.2009, dismissing I.A.No.257 of 2009 in O.S.No.189 of 2000, CRP (NPD) No.1725 of 2010 has been filed by the petitioners.

9.1. Aggrieved by the order dated 08.12.2009, dismissing I.A.No.258 of 2009 in O.S.No.189 of 2000, CRP (NPD) No.1726 of 2010 has been filed by the petitioner.

9.2. Aggrieved by the order dated 07.12.2009, dismissing I.A.No.855 of 2009 in O.S.No.189 of 2000, CRP (NPD) No.1727 of 2010 has been filed by the petitioners.

9.3. Aggrieved by the order dated 08.12.2009, dismissing I.A.No.856 of 2009 in O.S.No.189 of 2000, CRP (NPD) No.1728 of 2010 has been filed by the petitioners.

10. I.A.No.855 of 2009 in O.S.No.189 of 2000 was dismissed by the Trial Court on 07.12.2009 for the reason that the petitioners did not produce the death certificate of their father.

11. Even though, the respondents had disputed the date of death, no document was filed to disprove the statement of the petitioners in I.A.No.855 of 2009 in O.S.No.189 of 2000 that their father died on 20.08.2007. This was only the ground on which the Trial Court had dismissed I.A.No.855 of 2009.

12. The Trial Court after dismissing I.A.No.855 of 2009, passed the consequential orders dismissing I.A.No.257 of 2009 seeking to implead the petitioners as the LR's of the deceased father, which is

the subject matter of revision in CRP.No.1725 of 2010 and also dismissed I.A.No.856 of 2009 in O.S.No.189 of 2000 filed by the petitioners to set aside the abatement under Order 22 Rule 9 of CPC, which is the subject matter of revision in CRP No.1728 of 2010.

13.Even though, separate orders were passed by the Trial Court in the above referred interlocutory applications, the issue involved in all the three interlocutory applications arise out of the same suit, this Court is disposing of all the Civil Revision Petitions by a common order.

14.The reason given by the petitioners for condoning of delay of 592 days in filing the application to set aside the abatement under Section 5 of the Limitation Act was that they were aware of the suit filed by the deceased father only when the respondents attempted to mutate the revenue records just two days prior to the filing of the application seeking to condone the delay.

15.Despite sufficient reasons given by the petitioners that they were aware of the suits only two days prior to the filing of the application, the Trial Court dismissed all the three interlocutory applications namely, I.A.Nos.257, 855 and 856 of 2009. Further, the respondents also did not file any documentary evidence before the Trial Court to disprove the statement of the petitioners about the date of knowledge of the suit filed by their deceased father.

16.This Court, after hearing the submissions of the learned Counsel for the petitioners and after perusing the materials available on record, is of the considered view that the Trial Court ought to have allowed the applications since the date of death of the plaintiff is not disputed and the date of knowledge of the suit by the petitioners was also not disproved by production of any documentary evidence by the respondents and therefore, the orders of the Trial Court suffer from material irregularity and are erroneous.

17.Accordingly, the order dated 08.12.2009 in I.A.No.257 of 2009, order dated 07.12.2009 in I.A.No.855 of 2009 and order dated 08.12.2009 in I.A.No.856 of 2009 in O.S.No.189 of 2000 passed by the District Munsif Court, Jeyakondam are set aside. The CRPs shall stand allowed. However, there shall be no order as to costs.

सत्यमेव जयते

05.04.2018

Index: Yes
Internet: Yes
Speaking Order/Non-Speaking Order

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Note: Issue Order copy on 16.04.2018

To

The District Munsif Court, Jayankondam

ABDUL QUDDHOSE, J.

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