

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.04.2018

Delivered on: 11.07.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.1785 of 2013

Minor Akil Adhitya  
S/o.T.P.Kumaravel,  
rep by his Next friend guardian mother  
Srividya .. Appellant/Plaintiff

Versus

1. T.P.Kumaravel  
2. T.A.Kaliappan  
3. Rukmani  
4. P.Muthamil Selvan  
5. T.P.Rangasami  
6. T.P.Ramasamy  
7. S.P.Murugesan  
8. C.Pradeep Kumar  
9. G.Sopundaram  
10.G.Ramasamy ... Respondents/Defendants

Appeal filed under Order 43 Rule 1(C) of CPC, to set aside the order dated 05.01.2013 made in I.A.No.787 of 2012 in O.S.No.30 of 2011 on the file of the First Additional District Judge, Erode by allowing this Civil Miscellaneous Petition.

For Appellant : Mr.R.Marudhachalamurthy

For Respondents: Mr.S.Kaithamalai Kumaran for R6

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant against the order passed in I.A.No.787 of 2012 in O.S.No.30 of 2011 on the file of the First Additional District Judge, Erode. The said I.A.No.787 of 2012 in O.S.No.30 of 2011 was filed by the petitioner under Order 9 Rule 9 and Section 151 of C.P.C. to restore the suit, which was dismissed for default on 30.08.2012.

2. The Trial Court analysed the said application filed by the petitioner/appellant and the counter statement filed by the respondents, dismissed the said application filed by the appellant to restore the suit .

3. The appellant/petitioner before the Trial Court has stated that he has filed the suit for partition and other reliefs and the suit was posted on 21.08.2012 for trial in the list. Since on that date, there was a change in the counsel , the court posted the matter on 30.08.2012. It is stated by the petitioner that this suit in O.S.No.30 of 2011 is connected with O.S.No.10 of 2010 and O.S.No.49 of 2010 which are pending on the file of the II Additional District Judge, Erode and the appellant/petitioner has also filed the Tr.O.P.No.125 of 2012 for joint trial of all the cases, the said transfer original petition was posted on 12.09.2012 for hearing. Hence it is the grievance of the petitioner that the Trial Court on the same day dismissed the suit and unless the suit is restored to file, the petitioner will be put to severe loss and hardship. Stating the said facts, the petitioner filed adjournment petition and a memo on 30.08.2012 and representing his inability to proceed with the suit , since transfer original petition is pending and he is awaiting for the orders. The Transfer Original petition filed by the petitioner was also dismissed as not pressed on 15.10.2012.

4. In the counter statement , the respondents have stated that no transfer original petition was pending on that date and any connected suits mentioned by the petitioner. These respondents are not parties and the reason for not proceeding with the trial is also incorrect and it is stated by the respondents that the appellant/petitioner wantonly allowed for dismissal of the suit and came forward with this vexatious petition and the same has to be dismissed.

5. The Trial Court, after perusing the averments made by both sides, has given a finding that the connected suit mentioned by the petitioner were also filed in the year 2009 and 2010 and those suits are also filed by the minor children of the plaintiff. This suit was filed on 25.02.2011. Hence the petitioner is very well aware of other two earlier suits filed and the transfer original petition before fixing the case for trial. It is also observed by the Trial Court that only after long period, the suit is posted in the list on 21.08.2012. The Change of Vakalat and also adjournment petition was filed on 30.08.2012. It is also brought to the notice of the respondent herein that the said transfer petition was filed only on 30.08.2012 , when this suit is posted in the list for trial. Hence, the respondent has vehemently argued that when already

the cases were filed in the year 2009-2010 and this case also filed in the year 2011 if really the petitioner has grievance, he would have filed the transfer original petition at the earliest for joint trial but filing Transfer original petition on the date of hearing of the case shows that his intention is not to proceed with the case. It is also brought to the notice of this Court that the said transfer original petition which the petitioner represented before the Trial Court for adjournment was subsequently dismissed as not pressed by the petitioner ie., on 15.10.2012. The Trial Court based on the above facts and also identifying the intention of the petitioner who is not willing to proceed with the case has dismissed the same.

6. It is argued by the learned counsel for the petitioner that the petition to restore the suit which was dismissed for default was filed on the next day itself will prove the bonafide of the petitioner and his readiness to proceed with the case but the same has not been considered by the Trial Court and dismissed the same, the said dismissal of the petition causes him loss and hardship which cannot be compensated by terms of money.

7. If the petitioner opting for joint trial of all the cases, he would have taken steps at the earliest and not on that date of trial and further the petition filed only on 30.08.2012 proves his intention not to proceed with the case and also not press the petition, subsequently, proves that he is not opting for any joint trial. Hence, the purpose of filing adjournment petition on that day mentioning the reason of pendency of Transfer Original petition whereas the said petition was filed only on 30.08.2012 clearly proves that the petitioner is not interested in the proceeding with the case. There is no bonafide in his petition. Hence dismissal of the petition by the Trial Court does not require any interference.

8. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vv

To

1. I Additional District Judge, Erode

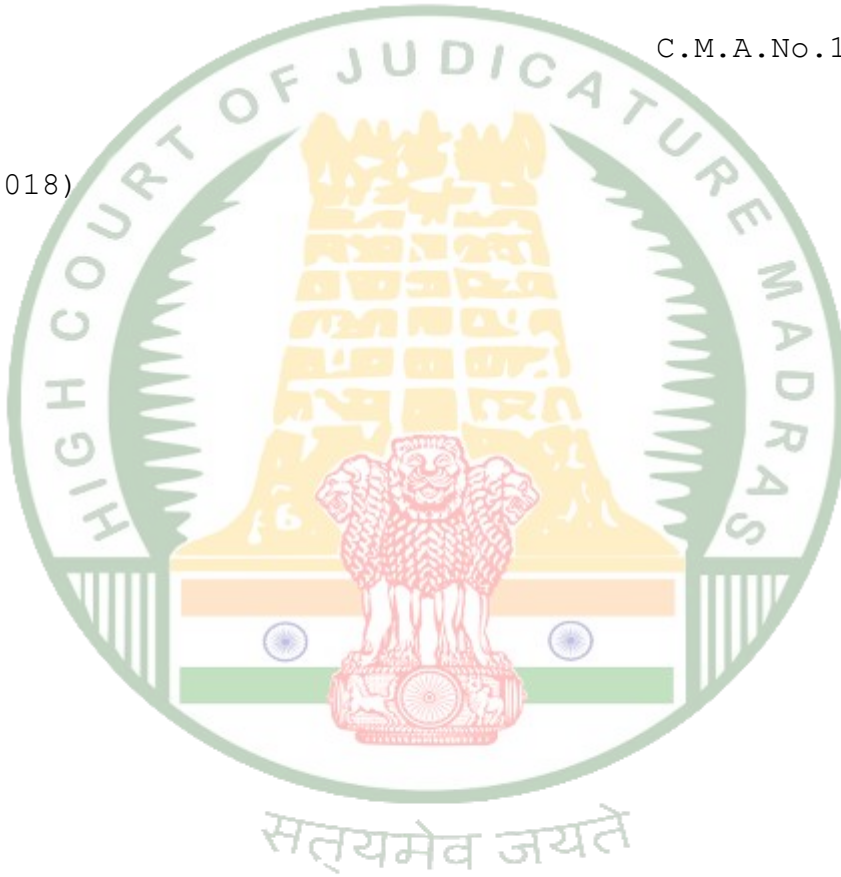
2. The Section Officer, VR Section,  
High Court, Madras.(2 COPIES)

+1cc to Mr.S.KAITHAMALAIKUMARAN, Advocate, S.R.No.45485

+1cc to Mr.R.MARUDACHALAMURTHY, Advocate, S.R.No. 45456

Judgment of  
C.M.A.No.1785 of 2013

PA (CO)  
TR(07/08/2018)



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