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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.06.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (MD) No.1006 of 2018

and

C.M.P. (MD) .No.4365 of 2018

1.V.Kambaroyar
2.K.Ponniyammal

.. Petitioners / Respondents /
3rd and 4th Defendants

Vs.

1.Sikkammal
2.Minor Kavialagan @
Thanga Alagarsamy
(Rep. Through Paternal Grandfather
and Guardian Bojan @ Alagarsamy

.. Respondents /Petitioners /
Plaintiffs 1&2

3.Kavitha
4.J.Dhanapalan
5.Jeyaprakash

..Respondents/Respondents/Defendants 1,2 and 5

PRAYER: Petition filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 09.01.2018 passed in I.A.No.398 of 2017 in O.S.No.90 of 2010 on the file of the Subordinate Court, Theni.

For Petitioners : Mr.S.Prem Kumar

For Respondents 1&2 : Mr.K.Appadurai
for Caveator

ORDER

The revision petition has been filed by the petitioners / defendants 3 & 4, challenging the order passed by the learned Subordinate Judge, Theni in I.A.No.398 of 2017 in O.S.No.90 of 2010 dated 09.01.2018

2. The respondents 1 and 2 herein/plaintiffs filed a suit in O.S.No.90 of 2010 for partition. The said suit was posted for trial. Subsequently, the respondents 1&2 / Plaintiffs filed an application to declare that the second respondent as major. The said application was allowed. But the Plaintiffs/respondents 1&2 have not chosen to carry out the amendment. In the meanwhile, the suit was dismissed for default. Thereafter, they filed another application in I.A.No.398 of 2017 to restore the said suit. The said IA was allowed on payment of cost of Rs.500/-. Challenging the above said order, the petitioners/Defendants 3 & 4 have approached this Court with the present petition.



3. The learned counsel for the petitioners would submit that the trial Court lost its sight at the time of considering the inordinate delay in filing the said application. Therefore, the order passed by the Court below is liable to be set aside.

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4. The learned counsel appearing for the caveators / respondents 1 & 2 / Plaintiffs would submit that the delay in filing the said application is only due to the bonafide reasons. He further submitted that if the said suit is dismissed for default without adjudicating on merits, it would affect the rights of the Plaintiffs/respondents 1 & 2. Therefore, the Court below has considered and passed a detailed order and allowed the application on payment of cost.

5. From the submissions of both parties, it is clear that the Plaintiffs / respondents 1 & 2 herein filed the above said suit in O.S.No. 90 of 2010 for partition. The said suit was dismissed for default for the reasons as stated in the affidavit. The trial Court has also considered the plea of the 1st plaintiff that he was suffering from stomach pain and allowed the application on payment of cost of Rs.500/-. By considering the reasons stated in the affidavit as well as by considering the guidelines of the Hon'ble Supreme Court in Esha Bhattecharjee case, this Court finds that there is no irregularity or illegality in the order passed by the Court below. But, however, taking into consideration of the delay and the expenses caused to the petitioners, this Court is inclined to impose heavy cost on the Plaintiffs/respondents 1 & 2.

6. In the light of the above facts and decision cited supra, this Court is inclined to pass the following directions:

"(1) the order passed in I.A.No.398 of 2017 in O.S.No.90 of 2010 is modified to the extent of imposing additional cost to the respondents 1&2 herein/Plaintiffs.

(2) accordingly, the respondents 1&2 / Plaintiffs shall pay additional cost of Rs.5000/- to the defendants within a period of two weeks from the date of receipt of the copy of this order, failing which the order passed in I.A.No.398 of 2017 in O.S.No.90 of 2010 shall automatically stands dismissed without further reference of this Court.

(3) if the above said conditions have been complied by the Plaintiffs/respondents 1 & 2, the trial Court is directed to restore the suit on its file and to dispose of the suit in O.S.No.90 of 2010 on merits and in accordance with law, after providing necessary opportunities to both parties, as early as possible, preferably, within a period of six months from the date of receipt of the copy of this



(4) both the parties, undertake that they will cooperate for the disposal of the suit within the time as fixed by this Court."

7. Recording the undertaking given by the both the parties, this Civil Revision Petition is allowed with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

To

1.The Subordinate Judge,
Theni.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.S.Prem Kumar, Advocate, SR.No.67333

+1CC to Mr.K.Appadurai, Advocate, SR.No.67343

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08.06.2018

PJL

ES/SV/MMS/SAR 1/20.06.2018/3P/6C