



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2018

CORAM

WEB COPY

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD) No.824 of 2018

Chendhur Pandian

.. Appellant/Petitioner/Plaintiff

-Vs-

1.Velayutha Nadar

2.Ponnammal

3.Nagarajan

4. Saravanan

5.Munish

6.T.Gnanaraj

7.T.Devaraj

8.T.Sankaralingam

9.T.N.C.Vijayasarithi

10.Vishnu S.Sha

11.Surendhira Reddy

12.K.Thangamariappan

13.T.Nagarajan

14.T.Nirmala Devi

15.Salbha Vishnu

... Respondents/Respondents/Defendants

PRAYER: Civil Miscellaneous Appeal - filed under Order 43 Rule 1(C) of C.P.C against the fair and decretal order passed in I.A. No. 248 of 2016 in O.S.No.80 of 2009 on the file of the 2nd Additional District Court, Thoothukudi dated 12.07.2018.

For Appellant

: Mr.T.Selvan

<https://hcservices.ecourts.gov.in/hcservices/>

For RS/Caveator

: Mr.M.P.Senthil

for Mrs.V.Neelaveni

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the fair and decreetal order passed in I.A. No. 248 of 2016 in O.S.No.80 of 2009 on the file of the 2nd Additional District Court, Thoothukudi, dated 12.07.2018.

2. The appellant is the plaintiff. He filed the suit for partition. The respondents are the defendants, who are contesting the suit. The suit filed by the appellant was dismissed for default on 17.12.2013, as there was no representation on behalf of the appellant. The appellant filed an application to restore the suit. According to the appellant, he engaged an Advocate from Tirunelveli and while his Advocate was coming to attend the hearing at Tuticorin, he met with an accident and could not attend the court in time.

3. The respondents filed separate counter affidavits and contended that the appellant has no intention of conducting the suit and he has taken more than 20 adjournments, when the suit was posted for trial. The appellant purposely allowed the suit to be dismissed for default. The appellant filed an application in January 2014 to restore the suit with defects and he has not taken immediate steps to get the application numbered and after number of returns and representation, application was numbered only in the year 2016 after more than 2½ years of filing the application and prayed for dismissal.

4. The learned Judge, considering the averments in the affidavit and the counter affidavits, dismissed the application.

5. Against the said order, the appellant has come out with the present appeal.

6. The learned counsel appearing for the appellant contended that the suit is filed for partition against the father, mother, brothers and sisters. The first respondent is the father and second respondent is mother. The appellant, the respondents 3 to 5 are the children of the first and second respondent.

7. The learned counsel appearing for the appellant further contended that while coming from Tirunelveli, his Advocate met with an accident and he could not attend the court in time and the appellant has given a valid reason to restore the suit and prayed to give an opportunity to conduct the suit on merits. The learned Judge erred in holding that the appellant has not produced any document to substantiate his case.

8. The learned counsel appearing for the third respondent/Caveator reiterated the averments made in the counter affidavit and contended that the intention of the appellant is only to drag on the proceedings. After taking more than 20 adjournments when the suit



was posted for trial, the appellant allowed the suit to be dismissed for default. The reason given by the appellant for non-appearance is not valid and sufficient to restore the suit and prayed for dismissal of the appeal.

9. Heard the learned counsel appearing for the appellant and Mr.M.P.Senthil, for Mrs.V.Neelaveni, learned counsel who took notice for the third respondent/Caveator and perused the materials on record.

10. From the materials on record, it is seen that the appellant has taken number of adjournments for conducting the trial and on the date of dismissal, there was no representation on behalf of the appellant. Even if there was a delay on the part of his Advocate reaching the court in time, the appellant could have taken steps to pass over the case and conduct the case thereafter. From the materials on record, it is seen that the appellant has filed the application to restore the suit in January 2014. The appellant got the application numbered only in the year 2016. From the above, it is seen that the contention of the learned counsel for the third respondent that the appellant filed the application with some defects and even after number of returns, failed to comply with the defects and re-presented the same after rectifying the defects; the application filed in January 2014 was numbered only in the year 2016; the appellant has not explained the delay in getting the application numbered immediately or within the reasonable time; this shows that the intention of the appellant is only to drag on the proceedings without conducting the trial, has considerable force and is acceptable. The learned Judge has considered all the materials on record in proper perspective and dismissed the Interlocutory Application by giving cogent and valid reasons. There is no error warranting interference by this Court.

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

Sd/-
Assistant Registrar(CRL.SIDE)

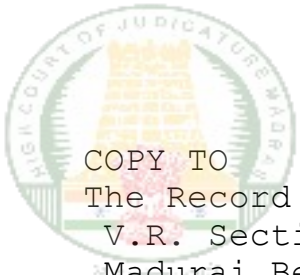
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Sub Assistant Registrar(CS-III)

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To

The 2nd Additional District Court,
Thoothukudi



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- + 1 CC TO Mr.T.SELVAM , ADVOCATE IN SR No. 90507.
- + 1 CC TO Mr.M.P.SENTHIL , ADVOCATE IN SR No.90070.

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