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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2019

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

C.M.A.Nos.782 and 783 of 2001

Nachimuthu Gounder ... Appellant in both appeals

-Vs-

Chinnasamy Gounder ... Sole Respondent in CMA 782 /
2001

R2 in CMA 783 of 2001

Palanisamy Gounder ... R1 in CMA No.783 of 2001

Prayer : Civil Miscellaneous Appeals under Order 41 Rule 1(t) of CPC against the fair and decretal order dated 12.02.2001 I.A.Nos.102 and 104 of 2000, in A.S.Nos.89 and 90 of 1999 on the file of the Principal District Judge, Erode.

For Appellant : Mr.K.S.Jeyaganeshan

For Respondent : Mr.N.Manoharan

J U D G M E N T

These two appeals have been filed by one Nachimuthu Gounder S/o Ammasi Gounder. The appellant was the plaintiff in O.S.No.79 of 1996, filed for a decree for specific performance of the agreement dated 20.08.1989. The appellant was also the defendant in another suit in O.S.No.80 of 1995, filed by the respondent seeking a decree for declaration of title of the suit property that has been sought to be decreed by specific performance.

2. Both the matters were tried together simultaneously and the suit for specific performance in O.S.No.79 of 1996 was dismissed and the suit for declaration of title in O.S.No.80 of 1995 was decreed against the appellant. Therefore, two appeals viz., A.S.No.80 and 90 of 1999 were filed before the learned Principal District Judge, Erode.

3. Learned counsel appearing for the appellant submitted that when the appeals were listed for hearing on 06.08.1999 and was re-posted to 09.08.1999, as the learned counsel reported 'no instructions', the appeals were dismissed for default on 09.08.1999. Thereafter, applications in I.A.Nos. 102 and 104 of 2000 were filed to restore the appeals, on



07.09.1999. The applications were returned on 08.09.1999 for defects and the applications were re-presented on 22.9.1999 with some other mistakes. Once again the above applications were returned on 28.09.1999. After a delay of five months, the applications were represented on 23.02.2000. Finding no bonafide or genuineness on the part of the appellant, seeking restoration of the appeals, the learned Principal District Judge, Erode dismissed the applications on 12.02.2001.

4. Learned counsel for the appellant submitted that a suit for specific performance of the agreement dated 20.08.1989 was filed before the file of the District Munsif Court, Erode, which was transferred to the file of the learned District Munsif Court, Perundurai and one another suit was also filed by the respondent, seeking a decree for declaration of the title of the suit property. When the suit for specific performance was dismissed on 26.02.1999, the learned counsel for the appellant ought not to have carelessly misrepresented to the Court that there was no instructions. However, after realising the mistake, he has moved an application for restoration on 07.09.1999 and after representation on various dates, curing the defects, when the matter was taken up, the learned appellate Court has wrongly dismissed it and therefore, the impugned decreetal order is liable to be set aside. In support of his submission, he relied on the judgment of the Apex Court in the case of "Satpal Singh -Vs- Chunni Lal (CDJ 2009 SC 984)", in which it was held that when an application for restoration of the appeal is moved with justifiable reasons, ordinarily the Court should set aside the exparte order and allow the parties to adjudicate the issue on merits. Placing reliance on the said decision, the learned counsel for the appellant submitted that in the present case also, no prejudice would be caused to the respondent if the matter is restored back to file and heard on merits.

5. Learned counsel for the respondent, opposing the above prayer, vehemently argued that when the sale agreement was entered between the parties on 20.08.1989 and the appellant miserably failed to adhere to the terms and conditions of the agreement dated 20.08.1989, the respondent filed a suit for declaration of title. The appellant also filed a suit for specific performance of the sale agreement dated 20.08.1989. Finding that there was no merit or justification to entertain the suit for specific performance, the same was dismissed, and finding that the respondent was able to substantiate the prayer for passing a decree of declaration of title of the suit property, the trial Court decreed the suit on 26.02.1999. When the appellant filed the suit for specific performance, the second respondent filed the suit for declaration of title of the same suit property in O.S.No.1426 of 1989, which was later re-numbered as O.S.No.80 of 1996 on the file of the District Munsif Court, Perundurai and was subsequently decreed. Having lost the suit for specific performance twenty years ago viz., on 26.02.1999, the appellant in an effort to deny the



fruits of the judgment and decree passed on 26.02.1999, in favour of the second respondent, has not come forward to list the matter. Even after filing the present appeals in this Court also, he kept it in the cold storage, without taking any steps whatsoever to bring the matter for hearing. Deliberate pendency of the matter at the hands of the appellant clearly shows that he is not interested to prosecute the appeals. Even if these two appeals are allowed and the matter is remanded back to the first appellate Court, it would be highly not only inconvenient to the parties, but also to the Court below, to proceed with the matter and to recollect the events taken place at the time of entering into the agreement dated 20.08.1989, which is about 30 years ago. When the memory of the human beings is very short, no purpose is going to be served by entertaining these appeals.

6. I find full force in the above contentions raised by the learned counsel for the respondent. When the suits were filed in the year 1996, one for specific performance and another for declaration of title of the very same property, both the matters were simultaneously tried by the learned District Munsif Court, Perundurai and the suit for specific performance filed by the appellant was dismissed, whereas the suit filed by the respondent for declaration of title and consequent injunction was allowed, by the common judgment and decree dated 26.02.1999. When appeals were filed aggrieved by the said judgment and decree, for the reasons best known to them, the learned counsel for the appellant who appeared before the first appellate Court, reported 'no instructions' and hence the appeals were dismissed by the judgment dated 09.08.1999. Thereafter, when the applications for restoration of the appeals were filed, the same were returned for rectification of defects. Even thereafter, the learned counsel for the appellant represented the same with number of mistakes and errors on 22.09.1999, once again the applications were returned on 28.09.1999, giving a last chance to rectify the mistakes. Therefore, the learned first appellate Court, disbelieving the lame excuses made by the learned counsel for the appellant that inadvertently it was represented that he had no instructions, dismissed the applications filed for restoration of the appeals. Aggrieved by the said orders, the present appeals are filed. When there was an agreement entered into between the parties on 20.08.1989, due to the failure of the terms of the agreement, a suit for specific performance was filed. After the dismissal of the suit for specific performance, the suit filed by the respondent for grant of decree for declaration of title was allowed. Since the trial Court has dismissed one suit filed for specific performance on 26.02.1999 and decreed another suit filed by the respondent for declaration of title of the very same suit property, no purpose would be served by entertaining these two appeals after 30 years from the date of the institution of the



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7. Therefore, finding no merit whatsoever, to entertain these appeals, the same are dismissed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

KST

To

1.The Principal District Judge, Erode

2. The Section Officer,
VR Section, High Court, Madras-104

+2cc to Mr.K.S.Jeyaganeshan, Advocate SR.No.65324, 65323

+2cc to Mr.N.Manoharan, Advocate SR.No.65214, 25217

C.M.A.Nos.782 and 783 of 2001

GMR(CO)
GMY(14/11/2019)