

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1476 of 2007

L.K.Prabu

...Appellant/Plaintiff

vs

1.M/s.Shajbas Construction Private Limited,
Rep. By its Managing Director,
A.M.Mohammed Ibrahim,
No.8/29, V.C.K. Layout,
Trichy Road, Coimbatore-18.

2.C.V.Kuruvilla

3.P.M.Thomas

...Respondents/Defendants

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) Code of Civil Procedure, to set-aside the order and decreetal order dated 11.07.2006 made in I.A.No.25 of 2006 in O.S.No.268 of 1993 on the file of the Court of the District Judge of The Nilgiris at Udhagamandalam.

For Appellant : Mr.B.Srinivasan

For Respondents : No appearance for R1 & R2
R3-Not claimed

J U D G M E N T

The Appellant is aggrieved by the impugned order dated 11.07.2006 passed by the Court of the learned District Judge, The Nilgiris, Udhagamandalam in I.A.No.25 of 2006 in O.S.No.268 of 1993 and therefore the appellant has come forward with the present Civil Miscellaneous Appeal.

2. The Appellant, filed O.S.No.268 of 1993 on the file of the learned District Judge, The Nilgiris, Udhagamandalam, to partition the Suit Schedule property. In the suit, the appellant filed a petition in I.A.No.225 of 2005 to include a prayer that the agreement dated 05.08.1982 registered as document N0.714 of 1982 and the release deed dated 20.08.1982 were fraudulent, sham and nominal and not binding on the appellant herein. The said petition was dismissed on 19.10.2005. The case was thereafter posted for evidence of the appellant. It was adjourned to 27.10.2005 and thereafter to 03.11.2005. On that date, the appellant failed to appear before the Court and therefore the suit was dismissed for default.

3. Under these Circumstances, the appellant filed I.A.No.25 of 2006 in O.S.No.268 of 1993, on 29.11.2005 before the learned District Judge, The Nilgiris, Udhagamandalam to restore the suit to the file of the Court under Order IX Rule 9 of CPC.

4. By the impugned order, the above said Court dismissed the application with the observations that there was no sufficient cause for non appearance on 03.11.2005 of the appellant. The reason that the appellant was contemplating to file C.R.P before this Court was not substantiated. Therefore the said application was liable to be dismissed for want of sufficient reason.

5. Heard the learned counsel for the Appellant and there is no representation on behalf of the respondents and perused the materials available on record.

6. This is the case of the appellant, who filed O.S.No.268 of 1993 before the District Court, Udhagamandalam. The suit dragged on till 2005 and was finally dismissed on 03.11.2005 for non appearance of the Appellant. Thereafter, the appellant claims to have filed a CRP before this Court. Since, the suit is for partition of the Suit Schedule Property and recovery of possession and I am of the view, he should be entitled to establish his rights in accordance with law.

7. Accordingly, the impugned order dated 11.07.2006 passed

by the Court of the District Judge of The Nilgiris, Udhagamandalam in I.A.No.25 of 2006 in O.S.No.268 of 1993 is set aside and the case is remitted back to the learned District Judge, The Nilgiris, Udhagamandalam, to complete the trial and to pass a Judgment and Decree in accordance with law on merits within a period of nine months, from the date of receipt of a copy of this order. It is made clear if the appellant resorts to further dilatory tactics, the District Court may impose heavy cost on the appellant apart from dismissing the suit. In the result, this Civil Miscellaneous Appeal stands Allowed. No costs.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1.The learned District Judge,
The Nilgiris, Udhagamandalam.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.B.Soundarapandian Advocate sr92242

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