

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.3058 of 2010

1. Ramalingam
2. Elumalai

.... Petitioners

Vs

1. Padamavathi ammal (died)
Recorded as R1 died as
no legal heirs vide order
dated 14.11.2019 in
C.R.P.No.3058 of 2010
as per the memo dated
14.11.2019.

2. Mannankatti Gounder
3. Ananthi

.... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order dated 28.06.2010 passed in C.M.A.No.16 of 2006 on the file of the District Court, Thiruvannamalai, confirming the order and decree dated 12.09.2006 made in I.A.No.126 of 2006 in O.S.No.240 of 2000, on the file of the Subordinate Court, Cheyyar.

For Petitioners : Mr.R.Rajarajan

For Respondents

R1 : Died

For R2 & R3 : Mr.AL.Ganthimathi

ORDER

Aggrieved over the order dated 28.06.2010 made in C.M.A.No.16 of 2006 on the file of the District Court, Thiruvannamalai, confirming the order dated 12.09.2006 made in I.A.No.126 of 2006 in O.S.No.240 of 2000, on the file of the Subordinate Court, Cheyyar, the petitioners, who are the plaintiffs in the above referred suit filed this Civil Revision Petition.

2. Before the trial Court, the petitioners herein filed a suit in O.S.No.240 of 2000, as against the respondents herein and sought for the relief of partition and separate possession. When the case was posted for trial on 07.03.2006, the petitioners did not attend the Court below and hence the learned Subordinate Judge, Cheyyar, dismissed the suit. Immediately on 24.03.2006, the petitioners had filed an application in I.A.No.126 of 2006, under Order 9 Rule 9 of C.P.C. The learned Subordinate Judge, Cheyyar, after affording opportunities to the respondents herein by an order dated 12.09.2006, dismissed the application filed by the petitioners. Challenging the said order, the petitioners filed a Civil Miscellaneous Appeal before the learned Principal District Judge, Thiruvannamalai, in C.M.A.No.16 of 2006. The said appeal was dismissed by an order dated 28.06.2010 confirming the order dated 12.09.2006. Aggrieved over the said findings, the petitioners are before this Court with the present Civil Revision Petition.

3. Now on going through the affidavit filed before the trial Court in support of the application filed under Order 9 and Rule 9 of C.P.C., the first petitioner has stated that when the suit was posted for trial on 07.03.2006, he was suffering from typhoid fever and continued in treatment till 12.03.2006 and thereafter only on 23.03.2006, he contacted his advocate and came to know about the dismissal order and immediately he filed the application to restore the suit.

4. On the other hand, in the counter affidavit filed by the respondents, they had averred that previous to the dismissal order, on 10.03.2005, for the same reason, now given by the petitioners, the suit filed by the petitioners/plaintiffs was dismissed and thereafter, they filed an application under Section 5 of Limitation Act for condoning the delay of 74 days in filing the application to restore the suit and the said application had been allowed. Further the respondents averred that in respect of the suit schedule property, already a suit was initiated before the Court of District Munsif, Arani in O.P.No.47 of 1945, in which, it was decided that the suit schedule property was belonging to one Padamavathy. The said findings was also confirmed by the learned Subordinate Court, Arani, in A.S.No.51 of 1994. Even after knowing the entire happenings, the petitioners now filed this application, after committing willfull lapses on their part.

5. Today when this Civil Revision petition is taken up for hearing, the learned counsel appearing for the petitioners and the respondents are present. They are reiterated the avernments set out in the affidavit as well as the counter affidavit.

6. The arguments advanced by the learned counsel appearing on the either side are considered.

7. Though it was averred that on the date of hearing, the petitioner was suffering from typhoid fever, the same has not been proved by way of let in evidence or at least by producing the medical certificate for establishing the truth. In this occasion, on going through the impugned order passed by the Court below, it was held that already in the previous litigation conducted before the Subordinate Court, Arani, it was confirmed that the suit schedule property belongs to one Padamavathy and ultimately held that proceed with the trial in the suit pertains to this Civil Revision Petition is not necessary.

8. The learned Subordinate Judge, Arani, further held that though it was alleged that the petitioner was suffering from illness, the same was not proved and thereby, the petitioners are not interested in

proceed with the case and thereby set aside the dismissal order is unnecessary. The first appellate Court has also held that the petitioners have not adduced any evidence to show that they have sufficient cause for their absence on the date of hearing and also dismissed the Civil Miscellaneous Appeal.

9. It is true that the petitioners have not proved the averments set out in the affidavit filed in support of the petition filed under Order 9 Rule 9 of C.P.C., by way of let in evidence. Though the said findings of the Courts below are reasonable one, before deciding the issue raised in the application filed by the petitioners, it is necessary to see the back ground of the case and the relief sought for in the plaint. In fact, the suit has been filed by the petitioner for the relief of partition and separate possession. In the plaint, the petitioners have stated that the suit schedule property is their ancestral property and they are entitled their share in that property.

10. Though the said fact was disputed on the side of the respondents by stating that already a judgment was pronounced in favour of one Padmavathy, in respect of the suit schedule property, in order to prove the said averment, before the trial Court as well as before the appellate Court, the respondents have not produced any copy of the judgment now relied by them. In fact, without examining anybody, the Courts below have concluded the application and the appeal in favour of

the respondents, which is erroneous in law.

11. The averments set out in the affidavit as well as in the counter affidavit have neither substantiated by let in evidence or by marking documents by the parties. In the said circumstances, since the suit is filed for the relief of partition and separate possession, for determining the title and right of the parties, elaborate trial is very much necessary. In the judgment reported in **(2019) 7 SCC 359** in the case of **Robin Thapa Vs. Rohit Dora**, our Hon'ble Apex Court has held as follows :-

"Ordinarily litigation is based on adjudication on merits of contentions of parties. Litigation should not be terminated by default, either of plaintiff or defendant. Cause of justice requires that as far as possible, adjudication be done on merits."

So applying the said principle in the case in our hands, I am of the opinion that because of the lapses committed by the parties, their rights would not be defeated. Therefore, for the reasons stated above, the impugned order dated 28.06.2010 made in C.M.A.No.16 of 2006 by the learned District Judge, Thiruvannamalai, confirming the order dated 12.09.2006 in I.A.No.126 of 2006 in O.S.No.240 of 2000, on the file of the Subordinate Court, Cheyyar, is liable to be set aside and accordingly set aside.

12. Now on going through the other circumstances found in this

revision petition, it appears that the suit pertains to this case filed in the year 2000 and hence it is appropriate to give some directions to the Subordinate Court, Cheyyar, to dispose the matter in a time frame manner. Accordingly, the learned Subordinate Judge, Cheyyar, is directed to dispose off the suit as earlier as possible, preferably within a period of three months from the date of the receipt of a copy of this Order.

13. With the above directions, this Civil Revision Petition is allowed. No cost.

14.11.2019

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order

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To

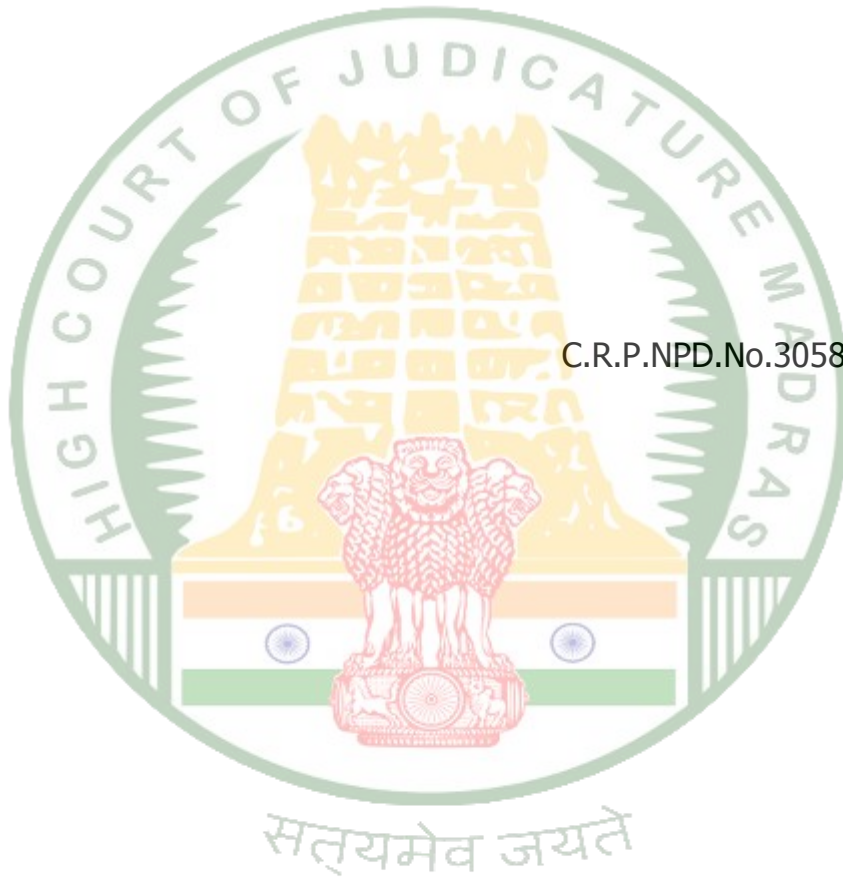
1. The District Court,
Thiruvannamalai,

2. The Subordinate Court,
Cheyyar.

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R.PONGIAPPAN, J.

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