

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.2520 of 2012 and
M.P.No.1 of 2012

1. Kalasa Sadayan
2. Kalasa Thangammal
3. Kalasa Sellammal

Petitioners

Vs

- Kalasa Thiruman (died)
1. Kalasa Bhaskar
 2. Kalasa Chandrasekar
 3. Kalasa Rajasekar
 4. Kalasa Senthilkumar
 5. Kalasa Chinna Thiruman
 6. Kalasa Muthukali
 7. Ambala Lakshmi
 8. Mary Thangammal
 9. Kalasa Mani
 10. Kalasa Chinnapillai
 11. Kalasa Ranganayaki

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 31.01.2012 passed in C.M.A.No.32 of 2006, on the file of the Subordinate Court, Namakkal, confirming the decretal order dated 02.02.2006 passed in I.A.No.1282 of 2005 in O.S.No.140 of 2004, on the file of the Additional District Munsif Court, Namakkal.

For Petitioners : Mr.V.Perumal for
M/s.T.Dhanyakumar and
Mr.D.Pradeep Kumar

For Respondents : For R1 to R10 – Mr.S.Saravanakumar
for Mr.I.Abrar Md.Abdullah
For R11 – No appearance

ORDER

Aggrieved over the concurrent findings made in IA No. 1282 of 2005 in OS No.140 of 2004, on the file of Additional District Munsif, Namakkal and in CMA No.32 of 2006 on the file of Subordinate Court, Namakkal, the petitioners, who are the appellants/petitioners/plaintiffs have filed this Civil Revision Petition and prayed to set aside the concurrent findings made in the above referred proceedings.

2. In the year of 1991, the petitioners herein had filed a Suit as against the respondents seeking the relief of partition and separate possession. When the suit is posted for enquiry, due to non-appearance of the petitioners, the learned Additional District Munsif, Namakkal by an order dated 18.07.2005, had dismissed the suit for default. Immediately within a period of limitation, the petitioners had filed an application under Order 9 Rule 9 of Civil Procedure code and pleaded to restore the suit for further proceedings. The learned Additional District Munsif, after affording opportunity to the respondents herein by an order dated 02.02.2006 had dismissed the application filed by the petitioners.

3. Aggrieved over the same, the petitioners have preferred an appeal in CMA No.32 of 2006, before the Subordinate Court, Namakkal. The learned Subordinate Judge, Namakkal has also after affording opportunity to the respondents herein, by an order dated 31.01.2012 had dismissed the said Civil Miscellaneous appeal filed by the petitioner.

4. Feeling aggrieved over the same, the petitioners are before this Court with this Civil Revision Petition.

5. Today when the Civil Revision petition came up for hearing, both the counsel appearing for the petitioners and the respondents are present and made their respective submissions.

6. The learned counsel appearing for the petitioners would contend that since the petitioners are residing in the hilly area (Valavanthi Nadu Village, Kollimalai), it is not easy for them to appear before the Court regularly situated in Namakkal, which is away from 100 kms from the place of their residence. Moreover, before passing an order of dismissal, the 2nd and 3rd petitioners thought that the 1st petitioner ought have been attended the Court and proceeded with the case. Since the 1st petitioner was in jail on 18.07.2005, he was also not in a position to attend the Court. Hence, the counsel, who is on record for the petitioners before the trial court had withdrawn the Vakalat, which was filed at the

time of filing the suit. So, the absence of the petitioners before the trial Court is neither wilful nor wanton. Accordingly, he prayed to set aside the concurrent findings made by the Court below.

7. On the other hand, the learned counsel appearing for the respondent would contend that in the impugned order passed in IA No. 1282 of 2005, the learned Additional District Munsif, Namakkal has held that before passing the order of dismissal, the counsel who was appearing on behalf of the petitioner withdrawn the Vakalat. Further, after preparing the affidavit on 17.08.2005, it was signed by the first petitioner on 18.08.2005 before the Superintendent of Police, Central Jail, Coimbatore and the same was admitted in his evidence also. That apart, in the Vakalat filed on behalf of the 1st to 3rd petitioners, the 2nd petitioner has not signed. Ultimately, without projecting any sufficient cause, the petitioner has filed an application before the courts below and the same was correctly decided by appreciating the circumstances found in the petition. Therefore, there is no need to interfere with the concurrent findings of the Courts below.

8. Upon considering the arguments advanced by the learned counsel appearing on either side, it is crystal clear that there is no dispute that when at the time of dismissal of the suit, the 1st petitioner was in the Central Jail, as convicted person and the 2nd and 3rd petitioners are

residing in hilly areas, that too 100 kms far away from the Court, in which the order was passed. So, the same reveals the fact that the 2nd and 3rd petitioners are not in a position to reach the Court easily for each and every hearing date. Though the affidavit filed by the 3rd petitioner was prepared on 17.08.2005, and the same was attested by the 1st petitioner on 18.08.2005, for the said lapse alone, we cannot blame the petitioners. The other petitioners 2 & 3 ought to have prepared the affidavit well in advance and get it signed from the first petitioner, who was in jail. Hence, dismissing the application for such lapse is nothing but against the principles of law. As far as other aspect is concerned, the 2nd petitioner has not signed in the Vakalat. It is the duty of the Registry attached with the Additional District Munsif Court, Namakkal to return the same immediately after pointing out the defects. But without returning the said Vakalat, passing orders citing the above mistake is not within the Rule, and also violation of procedural aspect.

9. In this occasion it is relevant and useful to see the judgment of our Honorable Apex Court reported in 2019 (7) SCC 359, in which it was held as follows:-

Ordinarily, a litigation is based on adjudication on merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the

defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

Following the principles laid down by our Honourable Apex Court in the case in our hand, the petitioner had filed the suit for the relief of partition and separate possession. In the averment set out by the petitioners in the plaint, they have stated that the suit schedule property originally belongs to the ancestors of the petitioners and respondents. Therefore, if the order passed by the Courts below is confirmed, the plaintiffs may lose their rights in the suit schedule property. Only elaborate trial can determine the right of the parties. So, the relief sought for by the petitioners in the plaint is one of the circumstances, which is necessary to set aside the findings arrived at by the Courts below.

10. In the light of the above discussions, I am of the opinion that the impugned order passed by the courts below is liable to be set aside and the petition filed by the petitioners before the Additional District Munsif, Namakkal in IA No.1282 of 2005 is set aside and the suit in OS No.140 of 2004 is restored on file. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

11. Further, since the suit is filed in the year of 2004, it is necessary to issue some direction to the learned Additional District Munsif Court, Namakkal for early disposal of the Suit. Hence, the learned judge is directed to post the suit in OS No.140 of 2004, in a day to day basis and dispose of the same as early as possible preferably within a period of six months from the date of receipt of copy of this order.

vrn

To

The Additional District Munsif Court, Namakkal.

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R.PONGIAPPAN, J.,

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