

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2019

CORAM :

THE HON'BLE MR. JUSTICE M. DURAISWAMY

C.R.P. (PD) Nos.2571 and 2572 of 2013

S.Pichai (Deceased)
R.Kamakshi

... Revision Petitioner
in both revision petitions

Vs.

R.Visalam (Deceased)
S.R.Kumar

... Respondent
in both revision petitions

Prayer in C.R.P. (PD) No.2571 of 2013 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 20.07.2011 made in C.M.A. No.132 of 2010 on the file of the VI Additional City Civil Court, Madras, reversing the fair and decretal order dated 21.04.2009 made in I.A.No.14645 of 2008 in O.S. No.3628 of 2002 on the file of the I Assistant City Civil Court, Madras.

Prayer in C.R.P. (PD) No.2572 of 2013 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 02.08.2011 made in C.M.A. No.132 of 2010 on the file of the VI Additional City Civil Court, Madras.

For Petitioner : Mr. M.S.Subramanian
in both revision petitions

For Respondent : Mr. P.B. Balaji
in both revision petitions

COMMON ORDER

Challenging the order passed in C.M.A. No.132 of 2010 on the file of the VI Additional Judge, City Civil Court, Chennai, the defendant has filed the above Civil Revision Petitions.

2.The plaintiff filed O.S.No.3628 of 2002 on the file of the I Assistant Judge, City Civil Court, Chennai, for mandatory injunction. Since the suit was dismissed for default on 09.04.2008, the plaintiff filed an application in I.A.No.14645 of 2008 to restore the suit. In the affidavit filed in support of the application, the plaintiff has stated that, since the details of the legal representatives of the deceased 1st defendant could not be obtained immediately, an appropriate application was filed to bring on record the legal representatives of the deceased 1st defendant. When the matter was called on 09.04.2008, the plaintiff's counsel explained the position and made arrangements so that the petitions are kept along with the case bundle. However, the case was called again and dismissed for non-prosecution. The defendants filed their counter affidavit stating that the suit was already dismissed for non-prosecution on two occasions earlier and for the third time, the suit was dismissed for non-prosecution. Hence, no indulgence could be shown to the plaintiff.

3.The trial Court, taking into consideration the case of both the parties, dismissed I.A.No.14645 of 2008. Aggrieved by the same, the plaintiff preferred an appeal in C.M.A. No.132 of 2010 on the file of the VI Additional City Civil Court, Chennai. The lower appellate Court, by judgment dated 20.07.2011, set aside the order of the trial Court and allowed the appeal on payment of cost. The plaintiff complied with the order of the lower appellate Court by depositing the cost of Rs.3,000/-, hence, the application in I.A.No.14645 of 2008 was allowed by the trial Court. As against the consequential order, the defendant has filed the above revision petition in C.R.P. No.2751 of 2013.

4.On a perusal of the order passed by the lower appellate Court, it is clear that the plaintiff has given sufficient reasons for his non-appearance on 09.04.2008, which resulted in dismissal of the suit. When the plaintiff has given sufficient reasons for his non-appearance, the lower appellate Court has rightly reversed the order passed by the trial Court and restored the suit on payment of cost of Rs.3,000/-, which was also paid by the plaintiff.

5.Learned counsel on either side submitted that, subsequent to the restoration of the suit, when the trial Court took up the matter, the plaintiff filed an application seeking for amendment of the plaint and as against the

order passed by the trial Court, the plaintiff filed a Civil Revision Petition before this Court in C.R.P.No.3985 of 2015 and the same is pending. The learned counsel on either side also submitted that this Court has also granted interim stay in C.R.P.No.3985 of 2015.

6.Since, the lower appellate Court has given cogent reasons for restoration of the suit, I find no reason to interfere with the same. Accordingly, these Civil Revision Petitions are dismissed. No costs.

18.10.2019

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Index : Yes / No

Internet : Yes / No

Speaking order / Nonspeaking order

To

1.The VI Additional Judge,
City Civil Court,
Chennai.

2.The I Assistant Judge,
City Civil Court,
Chennai.

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M. DURAISWAMY, J.

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