

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.1503 of 2014
and
M.P.No.1 of 2014

1.K.Raghavan

2.R.Tamilselvi

... Petitioners

Vs.

1.K.Rajasekaran

2.K.Rasayee

3.B.Rajakantham

4.K.Vimaladevi

5.I.Rajeswari

6.E.Saroja

... Respondents

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PRAYER: Civil Revision petition is filed under Section 115 of CPC, to set aside the fair and the decretal orders dated 26.11.2013 passed in I.A.No.15 of 2012 in A.S.No.54 of 2011 on the file of II Additional Sub Court, Cuddalore.

For Petitioners : Mr.T.Sezhian

For Respondents : Mr.K.A.Ravindran

ORDER

The present Civil Revision Petition has been filed against the fair and decretal order dated 26.11.2013 in I.A.No.15 of 2012 in A.S.No.54 of 2011 passed by the II Additional Subordinate Court, Cuddalore.

2.The petitioners are the first and seventh defendants in O.S.No.193 of 2009 filed by the first respondent herein. The said suit was filed for declaring right and title in the 'A' Schedule property in favour of the first respondent free from any obstruction or obstacle within a stipulated time failing which to deliver the suit 'A' Schedule property through process of court and for passing a preliminary decree for partition and for separate possession of the first respondent's 1/7 share in the suit 'B' Schedule property and for passing final decree to appoint a commissioner to divide the suit 'B' Schedule property and allot 1/7 share to the first respondent with motes and bounds and to deliver such allotted share to the first respondent through process of court free from obstruction of the petitioners and other defendants in the suit.

3.The petitioners remained absent and was set exparte. The learned Principal District Munsif has thereafter passed exparte judgment and an exparte preliminary decree on 10.03.2011.

4.Aggrieved by the same, the petitioners have preferred an appeal before the Appellate Court in time. In the said appeal, a check slip was issued by the Court and certain defects were pointed. However, the appellants failed to comply with the defects. The case was thereafter dismissed on 17.11.2011 due to failure of the petitioners to pay the deficit court fee.

5.The petitioners therefore filed an application in I.A.No.15 of 2012 in A.S.No.54 of 2011 to restore the appeal under Order 41 Rule 19 of CPC. The court has concluded that the petitioners had been in negligent in not only attending the Court below but had also not paid the Court fees as per the check slip and was making false allegations.

6.The Court has observed that there was absolutely no grounds to restore the appeal which was dismissed on 17.11.2011.

7.The counsel for the respondent had however made an endorsement that the said applications may be allowed on payment of cost. The Court below had thus ordered restoration of appeal subject to payment of cost of Rs.2,500/- to the first respondent on or before 03.12.2013.

8.The petitioners however failed to pay the same and therefore the petition was dismissed vide the impugned order dated 04.12.2013.

9.The learned counsel for the respondents submits that the petitioners have been dragging on the proceedings. I agree with the observation of the Court that the petitioners was negligent and does not descry any sympathy.

10.However, considering the facts that the petitioners and respondents are part of the same family, the petitioners deserve one another last chance to defend themselves subject to the payment of cost for dragging on the proceedings and for failure to the comply with requirements of the defects pointed out in the check slip and for not complying with order dated 26.11.2013.

11.The petitioners are therefore directed to pay of Rs.15,000/- to the first respondent as cost along with the deficit court fee assessed together with simple interest at 7.5% per annum on such deficit within a period of four weeks from the date of receipt of a copy of this order failing which this order shall stand automatically vacated. On payment of such cost and deficit court and on production of proof, the appeal shall be restored to the files.

12.The II Additional District Subordinate Judge, Cuddalore shall thereafter take up the appeal and dispose the same within a period of six months.

13.The Civil Revision Petition is disposed of with above observations. Connected Miscellaneous Petition is closed.

25.03.2019

Index:Yes/No
Internet :Yes/No
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To
1.The II Additional Subordinate Court,
Cuddalore.
2.The Principal District Munsif,
Cuddalore.

C.SARAVANAN, J.

jen

3.K.Raghavan

S/o.Krishnamoorthy,
Vadakku Rajakuppam Village,
Arangamangalam Post,
Cuddalore TK.

4.R.Tamilselvi.

W/o.Raghavan,
Vadakku Rajakuppam Village,
Arangamangalam Post,
Cuddalore TK.

5.The Section Officer,

V.R.Section, High Court,
Madras.

C.R.P.(NPD).No.1503 of 2014
and
M.P.No.1 of 2014

सत्यमेव जयते
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