

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)No.3275 of 2014

and

MP No.1 of 2014

1. Jayalakshmi
2. Thangammal

... Petitioners

Vs

Subramanian

... Respondent

Civil Revision Petition filed under Section 115 of C.P.C. to allow the Civil Revision Petition and set aside the order and decretal order passed on 23.10.2013 in I.A. No.1001 of 2013 in O.S. No.387 of 1994 by the Principal District Munsif, Namakkal.

For Petitioners : Mr.R.Rajesh

For Respondent : Mr.R. Saseetharan

ORDER

सत्यमेव जयते

The instant Civil Revision Petition has been filed challenging the order dated 23.10.2013 passed by the Principal District Munsif, Namakkal in I.A. No.1001 of 2013 in O.S. No.387 of 1994.

Brief facts leading to the filing of the instant Civil Revision**Petition under Section 115 of Civil Procedure Code :**

2. The petitioners are the defendants 2 and 3 in the suit O.S.No.387 of 1994 on the file of the Principal District Munsif, Namakkal. The respondent is the plaintiff in the suit. The respondent filed a suit for possession. According to the respondent, earlier the declaratory relief sought for by him in O.S.No.1062 of 1986 was granted in respect of the same property and the said judgment and decree also attained finality by the dismissal of the Second Appeal by this Court in S.A. No.733 of 1995. After the dismissal of the Second Appeal, the present suit was filed by the respondent seeking for possession of the suit schedule property from the petitioners, who are the defendants 2 and 3 in the suit. After service of notice on the petitioners in O.S. No.387 of 1994, the petitioners remained ex-parte and thereafter, an ex-parte decree dated 18.07.2011 came to be passed in favour of the respondent. Thereafter I.A. No.1001 of 2013 was filed by the petitioners seeking to condone the delay of 201 days in filing an application to set aside the ex-parte decree, dated 18.07.2011. A counter affidavit was also filed by the respondent in I.A. No.1001 of 2013 filed by the petitioners.

3. By order dated 23.10.2013, the Trial Court dismissed I.A. No.1001 of 2013 filed by the petitioners on the ground that sufficient reasons have not been given for condonation of delay. Aggrieved by the order dated 23.10.2013 passed in I.A. No.1001 of 2013 in O.S.No.387 of 1994, the instant Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code.

4. Heard Mr. R.Rajesh, learned counsel for the petitioners and Mr.R.Saseetharan, learned counsel for the sole respondent

Discussion :

5. Admittedly, the suit for declaration in respect of the same suit schedule property sought for by the respondent has attained finality by the dismissal of the S.A. filed by the petitioners in S.A. No.733 of 1995. The present suit viz., O.S.No.387 of 1994 has been filed by the respondent only to enforce the judgment and decree passed in the earlier declaratory suit which has already attained finality. Further as rightly held by the Trial Court, no sufficient reasons have been given by the petitioners for condoning the delay of 201 days in filing an application to set aside the ex-parte decree. Admittedly, the suit notice was served on the petitioners and they also engaged a counsel

and the written statement was also filed on their behalf and only during the stage of trial, they remained ex-parte, which resulted in passing of the ex-parte decree. This being the case, as rightly held by the Trial Court, no sufficient reasons have been given by the petitioner for condoning the delay in filing an application to set aside the ex-parte decree. This Court does not find any merit in this revision. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.07.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
vsi2

सत्यमेव जयते

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ABDUL QUDDHOSE, J.

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To
The Principal District Munsif,
Namakkal.



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