

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 09.09.2019

ORDER PRONOUNCED ON : .09.2019

CORAM:

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.372 of 2014

and

M.P.No.1 of 2014

1. Kandasamy

2. Kavitha Sampath

Petitioners

Vs

1. Kamini

2. Velmurugan

3. Baskaran

4. Ester James

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 14.11.2013 passed in I.A.No.315 in I.A.No.206 of 2011 in O.S.No.1652 of 2006 on the file of III Additional District Munsif, Puducherry.

For Petitioners : Mr.L.Poovendra Perumal

For Respondents : For R4 - Mrs.Gladys Daniel

ORDER

Aggrieved over the order passed in I.A.No.315 in I.A.No.206 of 2011 in O.S.No.1652 of 2006 on the file of III Additional District Munsif, Puducherry, the petitioners herein, who are the defendants 1 and 4 in the above referred original Suit preferred this Civil Revision Petition.

2. Before the trial Court, the 4th respondent in this Civil Revision Petition has filed a Suit as against these petitioners and other respondents and seeks the relief of permanent injunction, restraining the defendants and their men in interfering with the peaceful possession and enjoyment of the Suit property.

3. On 14.12.2009, the learned III Additional District Munsif passed an exparte decree as against the petitioners and the respondents 1 to 3. Immediately, the petitioners filed an application to set aside the exparte decree dated 14.12.2009. After affording opportunity to the other side, who are all appeared, the learned III Additional District Munsif passed an order dated 22.08.2013, in which he has allowed the application filed by the petitioners on condition to pay a sum of Rs.4,000/-, by way of cost to the respondents payable by the petitioners on or before 30.08.2013.

4. Unfortunately, the petitioners herein have not complied the conditional order passed by the learned III Additional District Munsif, within a time; but, they have filed an application under Section 148 of Civil Procedure Code and prayed to extend time for the payment of cost. The learned III Additional District Munsif has elaborately discussed the merits of the petition filed by the petitioner and dismissed the petition on 14.11.2013. Against which, the petitioners are before this Court with this present Civil Revision Petition.

5. The learned counsel appearing for the petitioner would contend that, only in the extra-ordinary circumstances, particularly due to illness, the petitioners have not paid the cost as directed by the trial Court. Further, the order of dismissal passed by the trial Court technically is not amounts to substantial justice, since the provision under Section 148 of Civil Procedure Code permits the Court for extending time.

6. On the other hand, the learned counsel appearing for the 4th respondent would contend that without any substantial evidence, the petitioners have filed an application and thereby the order passed by the trial Court is fully in accordance with law and there is no need to interfere with the same.

7. Upon considering the arguments advanced on either side, in respect to filing of suit, passing an ex parte order against the defendants, filing petition under Section of 148 of C.P.C are all admitted by either side. While at the time of disposing the application filed by the petitioner under Section 148 of C.P.C the lower Appellate Court has rightly held that if the first petitioner is with physical ailments, nobody prevents the 2nd petitioner to appear before the Court or atleast she must be vigil in payment of cost. Only upon considering the said fact that the affidavit filed by the 1st petitioner, is not sufficient to prove the case of the petitioner and ultimately concluded that the petitioners are attempted to protract the proceedings.

8. It is true that after filing the suit in the year of 2006, the petitioners have filed the application concerned only in the year of 2013. In the affidavit filed by the petitioner, he has specifically stated that the date on which the learned III Additional District Munsif posted the petition for payment of cost. Due to the illness, he did not contact the counsel in time and pay the cost. Eventhough, he has filed an application within 2 days, from the date fixed for the payment of cost, he has not stated any proper explanation with substantial evidence for the said 2 days delay. The learned trial Judge has rightly held the law is always come to rescue for the person, who is vigil and genuine. But, the case in our hand, the attitude of the petitioners reveals in fact that they are not interested in

proceeding with the case. Placing the whole burden on Advocate during the time of argument is not at all entertainable. It is true that the relief sought for by the petitioners is an equitable relief. Only to the person, who is having substantial proof for not adhering the order of the Court, they are entitled for the said relief. As already discussed, the petitioners are not actually vigil and genuine and hence they are not entitled to the said equitable relief. That apart, the Suit is filed in the year of 2006, that too for the relief of permanent injunction, after a lapse of so many years, such application filed by the petitioner, without any reasonable ground is not helpful to the case of the petitioner.

9. In view of the above discussions, I am of the opinion that there is no infirmity found in the order passed by the learned III Additional District Munsif, and the same is confirmed as such. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

vrn

To

The III Additional District Munsif, Puducherry

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R.PONGIAPPAN, J.,

vrn



Pre-delivery Order in
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