

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) No.3789 of 2014

Lakshmanan

... Petitioner

Vs.

Saraswathi Ammal

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal orders dated 28.02.2014 in I.A.No.30 of 2012 in A.S. ... of 2012 on the file of the Principal Subordinate Judge, Cuddalore.

For Petitioner

... Mr.R.Meenal

For Respondent

... Mr.N.Subramanian

ORDER

The instant civil revision petition has been filed challenging the order dated 28.02.2014 passed by the learned Principal Subordinate

Judge, Cuddalore in I.A.No.30 of 2012 in unnumbered AS of 2012.

Brief facts leading to the filing of the instant revision under Section 115 of the Code of Civil Procedure:

2. The petitioner is the appellant in the unnumbered AS ... of 2012 on the file of the learned Principal Subordinate Judge, Cuddalore. The petitioner filed the suit O.S.No.241 of 2003 on the file of the learned District Munsif Court, Cuddalore for declaration and injunction in respect of the suit schedule property against the respondent. The respondent filed an application viz., I.A.No.1579 of 2003 under Order 7 Rule 11 CPC to reject the plaint filed in O.S.No.241 of 2003. The said application viz., I.A.No.1579 of 2003 came to be allowed on 09.10.2009. Aggrieved by the same, the petitioner who is the plaintiff in the suit preferred an appeal in CMA No.18 of 2009, before the learned Third Additional Subordinate Judge, Cuddalore.

3. Pending civil miscellaneous appeal, I.A.No.6 of 2011 in CMA.No.18 of 2009 has been filed by the petitioner who is the plaintiff in

the suit seeking permission of the court below to convert the civil miscellaneous appeal into a regular appeal. The learned Third Additional Subordinate Judge, Cuddalore dismissed CMA.No.18 of 2009 and I.A.No.6 of 2011 by a common order dated 31.01.2012 on the ground that the civil miscellaneous appeal was not maintainable. Immediately after the passing of the common order dated 31.01.2012 in CMA.No.18 of 2009 and I.A.No.6 of 2011, the petitioner preferred an appeal along with a condone delay application viz., I.A.No.30 of 2012 to condone the delay of 814 days in preferring the appeal before the Principal Subcourt, Cuddalore as against the judgment and decree dated 09.10.2009 passed in I.A.No.1579 of 2003 in O.S.No.241 of 2003 filed by the respondent under Order 7 Rule 11 CPC.

4. It is the case of the petitioner that there is no delay in view of the pendency of the proceedings in CMA.No.18 of 2009 and I.A.No.6 of 2011. However, by order dated 28.02.2014, the court below dismissed I.A.No.30 of 2012 in unnumbered AS ... of 2012 on the ground that the petitioner has not diligently prosecuted the case. Aggrieved by the

dismissal of I.A.No.30 of 2012 in unnumbered AS ... of 2012 by the learned Principal Sub Court, Cuddalore, the instant Civil Revision Petition has been filed.

5. Heard Mrs.R.Meenal, learned counsel for the petitioner. Even though a learned counsel has entered appearance on the side of the respondent, there is no representation on the side of the respondent today.

Discussion:

6. It is an admitted fact that CMA.No.18 of 2009 and I.A.No.6 of 2011 was dismissed by a common order dated 31.01.2012 on the ground that the civil miscellaneous appeal under Order XLIII CPC is not maintainable as against an order allowing an application under Order 7 Rule 11 CPC, but only a regular appeal under Section 96 CPC read with Order XLI CPC is maintainable. In the instant case, the respondent filed I.A.No.1579 of 2011 under Order 7 Rule 11 CPC to reject the plaint filed in O.S.No.241 of 2003 filed by the petitioner. The said suit was filed for

declaration and injunction in respect of the suit schedule property.

7. According to the petitioner, he is the absolute owner of the suit schedule property. It is also stated in the affidavit filed in support of I.A.No.30 of 2012 that he was under the impression that a civil miscellaneous appeal under Order XLIII CPC is maintainable as against the order allowing the application for rejection of plaint under Order 7 Rule 11 CPC. In the instant case, CMA No.18 of 2009 was filed within the prescribed period as against the order dated 09.10.2009 passed in I.A.No.1579 of 2003. However, by a common order dated 31.01.2012, the court below has dismissed CMA.No.18 of 2009 and I.A.No. 6 of 2011 on the ground that the civil miscellaneous appeal is not maintainable and only a regular appeal is maintainable as against an order allowing the application for rejection of plaint under Order 7 Rule 11 CPC.

8. It is seen from the records that immediately after the passing of the common order dated 31.01.2012 holding that the civil miscellaneous appeal is not maintainable, the petitioner has preferred a regular appeal in unnumbered appeal before the Principal Sub Court,

Cuddalore. However, there is a delay of 814 days in filing the said appeal in view of the earlier proceedings pending on the file of the learned Third Additional Sub Court, Cuddalore which culminated into a final order dated 31.01.2012 holding that the civil miscellaneous appeal is not maintainable as against the order allowing the application for rejection of plaint under Order 7 Rule 11 CPC. The reason given by the petitioner for condonation of delay in filing the regular appeal is reasonable and convincing. However, the court below under the impugned order dated 28.02.2014 has rejected the same which in the considered view of this Court is an erroneous decision.

9. The court below ought to have considered the fact that the only due to the filing of the civil miscellaneous appeal before the Third Additional Sub Court, Cuddalore which is a wrong forum for agitating as against the order dated 09.10.2009 passed in the application filed under Order 7 Rule 11 CPC, the petitioner did not file the regular appeal on time. Being a suit for declaration and injunction, the court below ought to have considered this aspect while dismissing the application filed by

the petitioner.

10. For the foregoing reasons, this Court is of the considered view that the impugned order dated 28.02.2014 passed by the learned Principal Subordinate Judge, Cuddalore in I.A.No.30 of 2012 in unnumbered A.S. of 2012 is an erroneous order and has to be set aside.

Conclusion:

11. In the result, the impugned order dated 28.02.2014 passed by the learned Principal Subordinate Judge, Cuddalore in I.A.No.30 of 2012 in unnumbered A.S. of 2012 is hereby set aside and the Civil Revision Petition is allowed. No costs.

12. Since the appeal was filed in the year 2012 itself, a direction is given to the lower appellate court to dispose of the appeal after numbering the same within six months from the date of receipt of a copy of this order.

WEB COPY

05.08.2019

nl

Index : Yes / No

Internet: Yes/No

Speaking/Non-Speaking orders

ABDUL QUDDHOSE. J.,

nl

To

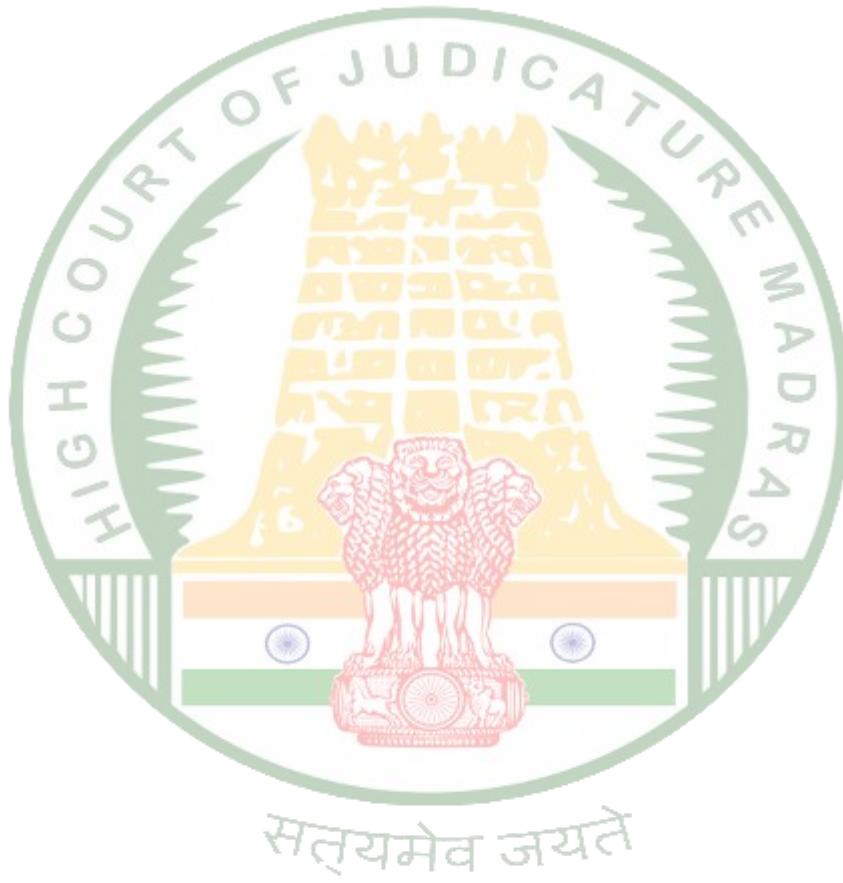
1.The Principal Subordinate Judge, Cuddalore.



CRP (NPD) No.3789 of 2014

WEB COPY

05.08.2019



WEB COPY