

C.M.P.No.17102 of 2019
in Rev.Appl.No.55 of 2018

V.M.VELUMANI, J.

Heard the learned counsel appearing for the petitioner as well as the 1st respondent and perused the materials available on record. The respondents 2 and 3 remained exparte in the Civil Revision Petition. In view of the same, notice in this Civil Miscellaneous Petition is dispensed with.

2.The petitioner filed O.S.No.108 of 2008 for declaration and permanent injunction. In the said suit, the petitioner filed applications in I.A.No.504 of 2008 to amend the plaint to include the relief of declaration that sale deed executed by the 2nd respondent herein in favour of the 1st respondent is null and void and I.A.No.505 of 2008 to implead the 1st respondent herein as 3rd defendant in the suit on the ground that the 1st respondent is the subsequent purchaser. The Trial Court by the order dated 17.09.2008, dismissed I.A.No.505 of 2008 on the ground that the defendants 1 and 2 were set exparte in the suit. In view of the same, the Trial Court by the order dated 29.01.2014 dismissed I.A.No.504 of 2008. The petitioner filed C.R.P.(PD).No.3919 of 2014, challenging the order passed in I.A.No.504 of 2008. The respondents 2 and 3 herein did not appear in the Civil Revision Petition. The 1st respondent was represented through counsel. This Court

considering the materials on record, allowed the Civil Revision Petition by order dated 13.12.2017, setting aside the order of dismissal in I.A.No.504 of 2008 and consequently restored I.A.No.505 of 2008. The 1st respondent filed Review Petition No.55 of 2018 stating that the suit O.S.No.108 of 2008 on the file of the District Munsif cum Judicial Magistrate at Denkanikottai was dismissed for default on the date of allowing the Civil Revision Petition. In the Review Application, the petitioner appeared through counsel. The learned counsel appearing for the petitioner did not dispute that the suit was dismissed for default. In view of the same, the Review Application was allowed and the order passed in C.R.P was set aside and Civil Revision Petition was dismissed as infructuous.

3.Now, the petitioner has come out with the present Civil Miscellaneous Petition to condone the delay of 356 days in filing the application to set aside the order dated 02.07.2018 made in Review Application No.55 of 2018 in C.R.P.(PD).No.3919 of 2014 and restore the order dated 13.12.2017 made in C.R.P.(PD).No.3919 of 2014.

4.According to the learned counsel appearing for the petitioner, the order dismissing the suit is set aside and suit is restored to file and therefore, the order made in Civil Revision Petition must be restored.

The petitioner is not entitled to the said relief. On the date when the orders were passed in the Civil Revision Petition as well as the Review Application, the suit was not restored to file and the suit was not pending. In view of the same, C.M.P.No.17102 of 2019 is dismissed, giving liberty to the petitioner to file fresh petitions for amendment, seeking relief of declaration as well as for impleading the 1st respondent herein as party defendant in the suit. If such applications are filed, the learned Judge is directed to consider the same on merits in accordance with law without raising objection of maintainability and without being influenced by the order dated 13.12.2017 made in C.R.P.(PD).No.3919 of 2014.

5. With the above direction, this Civil Miscellaneous Petition is disposed of.

30.08.2019

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Index : Yes / No
Speaking Order : Yes / No

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