



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Fourth day of June Two Thousand and Nineteen

CORAM :

The Hon'ble Mr. Justice S.S.SUNDAR

CMP(MD) . No.2051 of 2019
in
SA(MD) .No.389 of 2018

SHEIKDHAWOOD ... Petitioner/Appellant/Appellant/Defendant

Vs

UMMURALIYABEEVI (DIED)

1 NOORULKAMAR

2 SEENISEIDHAKATHI

3 BARAKKATHINISHA

4 NIHMATHUL AYIN

5 JENNATHUL FATHIMA

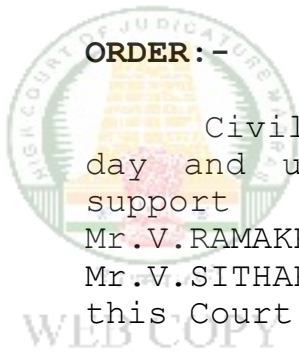
6 ANWAR ALI ... Respondents/Respondents/Respondents/Plaintiffs

Prayer in CMP(MD) . No.2051 of 2019 :-

Civil Miscellaneous Petition is filed under order XLI Rule 19 read with Section 151 of Civil Procedure Code praying this Hon'ble Court to restore the second appeal No.389 of 2018 which was dismissed for non-prosecution on 05.12.2018.

Prayer in SA(MD) .No.389 of 2018 :

Second Appeal is filed under section 100 of Civil Procedure Code against the Judgment and Decree passed in A.S.No.12 of 2011 on the file of the Additional District Judge, Ramanathapuram, dated 16.02.2016 confirming the Judgment and Decree dated 06.07.2011 passed in O.S.No.8 of 2009 on the file of the Sub Court, Ramanathapuram.



ORDER:-

Civil Miscellaneous Petition is coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.V.RAMAKRISHNAN, Advocate for the Petitioner and of Mr.V.SITHARANJANDASS Advocate for the respondents Nos.1,3,5 & 6, this Court made the following order:

This petition is filed to restore the second appeal, which was dismissed for non-prosecution on 05.12.2018.

2.The petitioner is the defendant in the suit in O.S.No.8 of 2009 on the file of the Subordinate Court, Ramanathapuram. The suit is for partition and the trial Court granted a decree for partition in favour of the plaintiff, declaring the plaintiffs' 2/4 share in all the suit properties. Aggrieved by the same, the defendant preferred an appeal in A.S.No.12 of 2011 on the file of the Additional District Judge, Ramanathapuram and the same was also dismissed. Aggrieved by the same, the defendants preferred the above second appeal.

3.However, on 05.12.2018, this Court after recording the statement of the learned Counsel for the appellant that he had no instruction, dismissed the above appeal for non-prosecution, calling the petitioner absent. Hence, to restore the above second appeal, the present petition is filed.

4.The petitioner/appellant has stated in the affidavit that in view of health problem suffered by the petitioner, he got sick and was bedridden. It is further stated that in the said circumstances, the petitioner could not give proper instructions to his counsel on record. However, without any further delay, the present petition has been filed by the defendant/appellant.

5.The reasons stated in the affidavit can be accepted, inasmuch as the petitioner could not give proper instructions to his counsel on record, as he was bedridden at the relevant point of time. It is further stated that it was in the said circumstances, the Counsel engaged by the appellant/petitioner has reported no instructions. However, the same counsel was again engaged and filed the present petition.

6.The learned Counsel for the respondents, however, opposed the application seriously by stating that the petitioner's counsel reported no instruction and that the same counsel has again filed the present petition. The contention of the learned Counsel for the respondents cannot be accepted.

7.In the present case, the only contention raised by the petitioner is about his health problem and probable immovability of the petitioner at the relevant point of time. Without any delay, the present petition has been filed. In such circumstances, this petition is liable to be allowed and this Court is satisfied with



the reasons stated in the affidavit filed in support of the petition, explaining the petitioner's non appearance on the date, when the second appeal was dismissed for non-prosecution on 05.12.2018.

8.Considering the nature of grievance expressed by the learned Counsel for the petitioner, this petition is allowed and the S.A(MD) No.389 of 2018, which was dismissed for default on 05.12.2018, is restored to file, on condition that the petitioner pay a sum of Rs.2,500/- by way of cash to the Counsel on record for the respondents within a period of two weeks from the date of receipt of a copy of this order, failing which, this petition stand automatically dismissed without any reference to this Court.

Sd/-

Assistant Registrar (A.S)

// True Copy //

Sub Assistant Registrar(CS)

To:-

1.The Additional District Judge,
Ramanathapuram.

2.The Subordinate Judge,
Ramanathapuram.

Copy to:

The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.V.Ramakrishnan, Advocate, SR.No.66804.

**C.M.P. (MD) No.2051 of 2019
and
S.A. (MD) No.389 of 2018
04.06.2019**

CS: (19/06/2019) 5P 5C