



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.09.2019
CORAM**

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (MD)No.484 of 2010

and

M.P(MD) No.1 of 2013

1.S.Peria Swamy
2.A.Murugan
3.A.Thankavel

... Petitioners/petitioners/
Appellants

Vs.

Lekshmana Perumal Nadar(died)
1.Ponnaiah Nadar
2.Wilson
3.S.Venkatesh Moorthy

... Respondents/Respondents/
Respondents

PRAYER:- Civil Revision Petition filed under Section 115 of Civil Procedure Code, challenging the petition and order dated 23.11.2009 made in I.A.No.282 of 2007 in A.S.No.69 of 1996 on the file of the Sub Court, Padmanabhapuram.

For Petitioners : Mr.Issac Mohanlal
Senior counsel
for Mr.H.Thayumanasamy
For Respondents : Mr.Rajasekar
for Mr.T.Lajapathy Roj

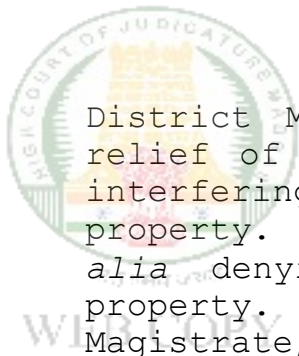
ORDER

The above civil revision petition has been filed challenging the order dated 23.11.2009 passed in I.A.No.282 of 2007 in A.S.No.69 of 1996 on the file of the Sub Court, Padmanabhapuram.

2.The said interlocutory application seeking to review the order dated 18.06.2002 made in A.S.No.69 of 1996. The first petitioner herein is the defendant in the suit in O.S.No.164 of 1995 on the file of the learned District Munsif Court cum Judicial Magistrate, Eraniel and the petitioners 2 and 3 are the subsequent purchasers from the defendant.

3.The facts in brief which are necessary for disposing the civil revision petition are as follows:-

The original plaintiff one Lekshmana Perumal Nadar had instituted the suit in O.S.No.164 of 1995 on the file of the learned



District Munsif Court cum Judicial Magistrate, Eraniel, for the relief of injunction restraining the first petitioner herein from interfering with the peaceful possession and enjoyment of the suit property. The first petitioner had filed a written statement *inter alia* denying the allegation that he had trespassed into the property. After contest, the learned District Munsif cum Judicial Magistrate, Eraniel, had decreed the suit by judgment and decree dated 11.06.1996. The said decree was taken up on appeal by the first petitioner herein in A.S.No.69 of 1996 on the file of the Sub Court, Padmanabhapuram. While the appeal was pending, the original plaintiff Lekshmana Perumal Nadar had died. Thereafter, the respondents herein had got themselves impleaded as respondents on the basis of the Will that has been executed by the Lekshmana Perumal Nadar in their favour on 31.12.1996. Thereafter on 18.06.2002, a memo came to be filed before the Sub Court, Padmanabhapuram, by the petitioners herein, which reads as follows:-

"Memo presented by Advocate V.Mahavan Pillay, for and on behalf of the appellant.

The appellants has already reported not pressing the appeal as the sole respondent died and the appeal may be dismissed for default".

4.In view of the above memorandum, the appeal suit was dismissed. Thereafter, in the year 2004, the petitioners have filed S.A.SR No.12565 of 2004. Since there was a delay in filing the second appeal, the petitioners had filed applications for condoning the delay and to dispense with the production of the printed copies of documents, etc. Since the appeal suit had been not pressed by the petitioners, the query was raised by the Registry as to how the Second Appeal is maintainable. Therefore, the matter came to be posted before this Court and ultimately by an order dated 11.09.2007, this Court had passed the following order:-

In view of the above submission, the Second appeal is not maintainable and the same is dismissed accordingly. If the appellant files any review petition before the first appellate Judge, the same can be considered in accordance with law. For the purpose of limitation, the time shall run from today.

5.After disposal of the second appeal, the petitioners have taken out the impugned interlocutory application seeking to review the order dated 18.06.2002 in A.S.No.69 of 1996. In the affidavit filed in support of this application, the petitioners would contend that they had no knowledge about the dismissal of the appeal. In the year 2004, one Thiraviam Nadar and his son had lodged a complaint against him before the Manavalakurichy Police Station claiming right over the plaint second schedule property, it was only when they had gone to police station in answer to the summon of the police that they have come to know about the dismissal order dated 18.06.2002.



6.The other ground is that the appeal was dismissed as not pressed by their counsel without their instructions. Interestingly, nowhere in the affidavit which was filed in support of the review application, the petitioners have stated that they had not given instruction to the counsel to not press the application. The respondents had filed their counter inter alia contending that the petitioners are very much in the know about the dismissal of the appeal as not pressed on 18.06.2002 and therefore, the review could not be allowed.

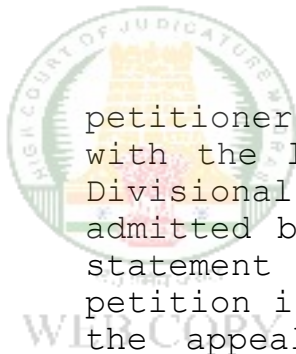
7.After hearing both sides and after perusing the judgment and decree cited on the side of the petitioners, the learned Subordinate Judge, Padmanabhapuram, was pleased to dismiss the said petition. Challenging the same, the revision petitioners are before this Court.

8.Mr.Issac Mohanlal, learned Senior Counsel appearing on behalf of the petitioners would contend that the learned counsel had not pressed the appeal without instruction from the party and that apart in the judgment in O.S.No.164 of 1995, the learned District Munsif has travelled beyond the scope of the suit by deciding on title in a suit for bare injunction. In support of his contention he would also submit the judgment of ***Himalayan Co-op. Group Housing Society Vs. Balwan Singh and others*** reported in (2015) 7 Supreme Court Cases 373, with special reference to paragraphs 31 and 32.

9.Mr.Rajasekar, learned counsel appearing on behalf of the respondents would draw the attention of this Court to the representation that was addressed by the petitioners to the Revenue Divisional Officer after disposal of A.S.No.69 of 1996, which would clearly show that the petitioners were very much aware of the withdrawal even as early as in the year 2003 and not 2004, as contented by them in the review application.

10.Heard the learned counsel appearing on either side and perused the papers.

11.From the records, it is seen that on 18.06.2002, the memo has been filed by the petitioners to the effect that since the sole respondent had died, they were not pressing the appeal and that the appeal could be dismissed for default. This memo has been filed after the respondents herein were impleaded as parties to the appeal on the basis of Will, which has been executed by Lekshmana Perumal Nadar, the original plaintiff. It is also seen that in the representation dated 26.09.2003 addressed to the Revenue Divisional Officer, Padmanabapuram, the petitioners have clearly stated that the appeal had been not pressed by them, since the Lekshmana Perumal Nadar had died. The representation nowhere contains an allegation that their counsel had made an endorsement without instruction of the parties. During the cross-examination of the second



petitioner/second appellant in A.S.No.69 of 1996, he was confronted with the letter dated 26.09.2003 addressed by them to the Revenue Divisional Officer, Padmanabapuram. The said letter has been admitted by the petitioners. This would clearly indicate that the statement made in the affidavit filed in support of the review petition is far from the truth. The memo withdrawing for dismissing the appeal as not pressed, has been taken consciously by the petitioners as it is evident from the very letter dated 26.09.2003 addressed to the Revenue Divisional Officer, Padmanabapuram and admitted by P.W.1.

12.In the unnumbered second appeal, this Court had only given permission to the petitioners/appellants to file a review and this Court has in clear terms stated that if the review was filed, the same should be considered as per the provision of law. The learned Subordinate Judge, Padmanabapuram, has considered the review in the light of the document filed before him and the law laid down in this regard. Therefore, no exception can be taken to the order passed by the learned Judge. The judgment cited on the side of the petitioners does not advance their case, since they have not taken any action against the Advocate concerned and that apart even the letter given by them to the Revenue Divisional Officer, implies that the memo of withdrawal has been filed only with their knowledge. There is no infirmity in the order passed by the learned Subordinate Judge, Padmanabapuram.

13.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Sub Judge,
Padmanabhapuram.

+1 CC to Mr.H.THAYUMANASWAMY, Advocate (SR-88513[F] dated 23/09/2019)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-88865[F] dated 24/09/2019)

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