



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2019

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THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P. (PD) (MD) No.682 of 2019

Athima Munivar Samuthaya Trust,
Represented by its Trustees,
East Street, Nagercoil,
Kanniyakumari District.
1.S.Govindaswamy
2.P.Annadurai

... Petitioners/Appellants
Petitioners/Plaintiffs

Vs.

Stara

... Respondent/Respondent/
Respondent/Defendant

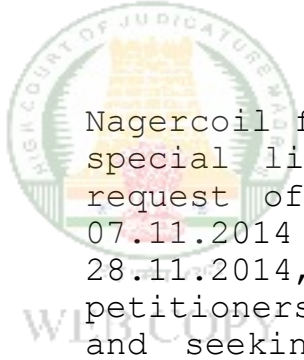
PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.08.2018 made in C.M.A.No.17 of 2018 on the file of the Additional District and Sessions Court, (Fast Track Court), Kanniyakumari at Nagercoil, against I.A.No.172 of 2016 in O.S.No.230 of 2013 dated 04.06.2016 on the file of Principal Sub Court, Nagercoil, in so far as direction to deposit of a sum of Rs.25,000/- is concerned.

For Petitioners : Mr.A.Arumugam
for Mr.R.Murugan

ORDER

The petitioners are the plaintiffs in O.S.No.230 of 2013 on the file of the Principal Sub Court, Nagercoil. In fact, the petitioners are the trustees in Athima Munivar Samuthaya Trust and the suit has been filed by the trustees on behalf of the trust. They have filed the suit for the relief of declaration declaring that the plaintiffs are having title, right, ownership etc. over the plaint schedule property and recovery of the same from the defendant. Consequently, they prayed for the relief of permanent injunction restraining the defendant and his men from making any encumbrance with modification and alternation in the plaint schedule property.

2.Before the lower Court after appearance, the respondent/
<https://hcservices.ecourts.gov.in/hcservices/> defendant filed the written statement denying the allegations made in the plaint. Thereafter, the learned Principal Subordinate Judge,



Nagercoil framed the issues on 22.09.2014 and posted the suit in the special list for trial on 17.10.2014. On the said date, at the request of the petitioners/plaintiffs, the case was adjourned to 07.11.2014 and again periodically adjourned to 17.11.2014, 28.11.2014, 13.12.2014, 16.12.2014 and 23.01.2015. Thereafter, the petitioners/plaintiffs filed an application in I.A.No.135 of 2015 and seeking the relief to call for some documents. The said petition was dismissed by the trial Judge on 23.03.2015. After dismissal of the said application, the case was again periodically adjourned for trial on 01.04.2015, 15.04.2015, 28.04.2015, 23.06.2015, 09.07.2015, 20.07.2015 and 29.07.2015. Subsequently, even after getting the above adjournments, on 13.08.2015, the petitioners sought for one another adjournment stating that there may be a possibility of settlement between the plaintiffs and defendant

3.The learned trial Judge accepting the request raised by the petitioners/plaintiffs, referred the matter to the mediation. But the matter was not settled before the mediation. Hence, without any alternative, the learned trial judge posted the case again for trial on 12.01.2016, 21.01.2016 and 01.02.2016. In the said circumstances, the plaintiffs filed another one application in I.A.No.47 of 2016 seeking to call for certain documents from the District Court and the said application was dismissed after contest on 25.02.2016. Thereafter, the case was posted for trial and ultimately, the suit was dismissed for default. Immediately, after dismissal of the suit, the plaintiffs filed an application in I.A.No.172 of 2016 for restoring the suit. In the said application, notice was ordered to the respondent. After receiving the counter from the respondent, the said application was dismissed by saying that the relief sought for by the plaintiffs is not maintainable. Against the said order, the plaintiffs preferred C.M.A.No.17 of 2018, on the file of the Additional District and Sessions Court, (Fast Track Court), Kanniyakumari at Nagercoil. The learned Additional District and Sessions Judge after affording sufficient opportunity to either side, on 04.08.2018 allowed the said application with the following conditions:-

1.The C.M.A is allowed and the order passed by the learned Principal Subordinate Judge, Nagercoil in I.A.No.172 of 2016 in O.S.No.230 of 2013 dated 05.01.2017 is hereby set aside.

2.I.A.No.172 of 2016 is allowed and the suit is permitted to be restored to file on payment of Rs.25,000/- either to the respondent or his counsel on or before 06.09.2018.

3.On proof of such payment only, the principal Subordinate Judge is directed to take the suit on file.

4.The appellant shall appear before the trial Court on 14.09.2018 and he shall begin his evidence by filing an affidavit and entire evidence on his side shall be completed on or before 31.10.2018,



5. The appellant shall co-operate for conclusion of trial within a period of five months.

6. If the appellant fails to comply any one of the conditions, it shall be open to the learned Principal Subordinate Judge to pass any adverse orders including dismissal of the suit for default.

4. Now challenging the said order, the petitioners/plaintiffs filed this revision seeking the relief to set aside the order passed by the learned Additional District and Sessions Judge, Fast Track Court, Kanniyakumari at Nagercoil.

5. The learned counsel appearing for the petitioners would contend that the trust is not having sufficient means to pay the huge sum of Rs.25,000/- and also the inaction on the part of the plaintiffs before the trial Court in conducting the trial, is neither wilful nor wanton. At the most he wanted to reduce the cost amount fixed by the learned Additional District and Sessions Judge.

6. Now for considering the arguments advanced by the learned counsel appearing for the petitioner, it is necessary to see the background of the restore application filed by the plaintiffs in I.A.No.172 of 2016 before the trial Court. It is not in dispute that the suit was filed in the year of 2013 and issues have been framed on 22.09.2014. It is an usual practice adopted by the trial Court that the special list was preferred only after giving necessary intimation to either parties. It is also a rule to publish the special list in the notice board. Of course, if the suit is not in a position to proceed further, it is the duty of either side to mention before the trial Court for removing the said suit from the special list at the time of finalization.

7. Now, it is the case of the petitioners/plaintiffs that after the date on which the suit was posted in the special list on 17.10.2014, till 2016, they successfully got 17 adjournments and thereafter, left the matter for dismissal. The number of adjournments got by the plaintiffs is only with the intention to prolong the proceedings and not for any other purpose. I am of view only in order to curtail this type of attitude by the parties, the learned Additional District and Sessions Judge imposed cost on them.

8. Considering the facts and circumstances, I am of the considered view that the cost fixed by the learned Additional District and Sessions Judge is not a heavy one. It does not in any way curtail the rights of parties. Accordingly, this petition is not having any merits and is liable for dismissal.

9. In the result, this Civil Revision Petition is dismissed. The petitioners are directed to pay the cost of Rs.25,000/- either



to the respondent or his counsel on or before 30th April 2019. No costs.

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Sd/-

Assistant Registrar (CS III)

Sub Assistant Registrar (CS)

To

1.The Additional District and Sessions Judge,
Fast Track Court,
Nagercoil, Kanniyakumari District.

2.The Principal Subordinate Judge,
Nagercoil.

COPY TO:

Stara,
W/o.Stanes,
Door No.30/21,Jeganathan Street,
Nagercoil,Nagercoil Village,
Agateeswaram Taluk, Kanniyakumari District.

+1cc to Mr.R.Murugan, Advocate, SR.No. 60969

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15.04.2019

CP

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