



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Monday, the Eleventh day of November Two Thousand and Nineteen

PRESENT

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The Hon`ble Mrs.Justice J.NISHA BANU

CMP(MD). Nos.91 to 94 of 2019
in
SA(MD).Nos.694 to 697 of 2009

1. Muthammal

2. P.Palraj

... Petitioners/Appellants(in all cases)

Vs

1 Radhakrishnan

2 R.Ratha

... Respondents/Respondents in CMP(MD).No.91/2019
M.Kasali Maraickayar

... Respondent/Respondent in CMP(MD).No.92/2019
A.Ameen Rajakhan

... Respondent/Respondent in CMP(MD).No.93/2019
K.Kabeer Maraickayar

... Respondent/Respondent in CMP(MD).No.94/2019

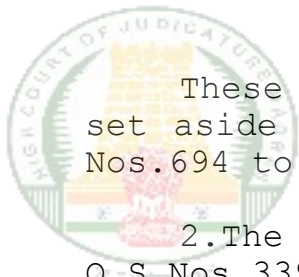
Common Prayer in CMP(MD). Nos.91 to 94 of 2019 :-

These petitions filed under Order 41 Rule 19 of Civil Procedure Code, praying to set aside the order dated 08.10.18 in SA (MD)Nos.694 to 697 of 2009 respectively passed by this Court in dismissing the above Second Appeals and restore the same.

Common Prayer in SA(MD). 694 to 697/ 2009 :

These appeals filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 29.10.2007 passed in AS. No. 123 to 126/2005 on the file of the Sub Court, Thoothukudi confirming the Judgment and Decree dated 11.08.2004 passed in OS.No. 339 to 342/2003 by the Principal District Munsif, Thoothukudi, respectively.

ORDER:- These Petitions coming for hearing on this day and upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Ms. J.Maria Rubit For Mr. G.Prabhu Rajadurai, Advocate for the Petitioners and of Mr. R.Vijayakumar, Advocate for the respondents, this Court made the following order:



These petitions have been filed by the petitioners seeking to set aside the dismissal order dated 08.10.2018 and restore S.A(MD) Nos.694 to 697 of 2009, which were dismissed on 08.10.2018.

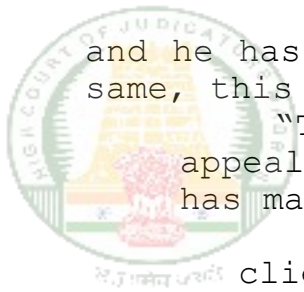
2.The respondents in each of the petitions filed the suits in O.S.Nos.339, 340, 341 and 342 of 2003 respectively, for the relief of permanent injunction in respect of the suit second schedule property. The Trial Court decreed the suits as prayed for. Against which, the petitioners / defendants filed A.S.Nos.123, 124, 125 and 126 of 2005 before the first appellate Court and the same were also dismissed. Against the concurrent Judgments and decrees passed by the Courts below, the petitioners / defendants have filed S.A(MD) Nos.694, 695, 696 and 697 of 2007. The second appeals were posted finally on 27.09.2018 and on 27.09.2018, since the learned counsel for the petitioners / appellants sought time again, the matter was directed to be posted on 08.10.2018 under the caption 'for dismissal' and on 08.10.2018, the learned counsel for the petitioners / appellants reported 'no instructions'. Recording the same, the second appeals were dismissed, vide Judgment, dated 08.10.2018. Seeking to restore the same, the present petitions have been filed.

3.The learned counsel for the petitioners / appellants would submit that since the petitioners changed their residence, he could not contact the petitioners and therefore, he reported no instructions on 08.10.2018, based on which, the second appeals were dismissed. Thus, he prayed to set aside the dismissal order, dated 08.10.2018 and restore the second appeals.

4.The learned counsel for the respondents would submit that the second appeals were posted finally on 27.09.2018 and on 27.09.2018, since the learned counsel for the petitioners / appellants was not ready, the matter was directed to be posted on 08.10.2018 under the caption 'for dismissal' and on 08.10.2018, the learned counsel for the petitioners / appellants reported 'no instructions'. This Court, after recording the same, has rightly dismissed the second appeals. Thereafter, the petitioners /appellants have filed the present petitions so as to drag on the proceedings and the reasons assigned by the petitioners / appellants are untenable.

5.Heard the learned counsel for the petitioners as well as respondents and perused the materials available on record.

6.The suits are of the year 2003. The second appeals have been filed in the year 2009. Against the concurrent Judgments and decrees passed by the Courts below, the present second appeals have been filed. Perusal of the record shows that after several adjournments, the second appeals were posted finally on 27.09.2018 and on 27.09.2018, since the learned counsel for the petitioners / appellants sought time again, the matter was directed to be posted on 08.10.2018 under the caption 'for dismissal' and on 08.10.2018, the learned counsel for the appellants reported 'no instructions'



and he has also made an endorsement to that effect. Recording the same, this Court has passed the following order:

"The learned counsel for the appellants, when the appeal was posted today under the caption for dismissal, has made an endorsement as follows:-

"I have not received any instructions from our client and same may be recorded."

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2.It is clear that the appellants had not come forward to give instructions, only because, they wanted to protract the proceedings. In normal course, notice will be issued to the appellants. Here the second appeal has been pending for nearly nine years and then when it is taken up for final hearing, the counsel informs the Court that he has no instructions. It is hoped that he has not been deliberately instructed to do so. It is clear that the appellants are deliberately protracting the proceedings. In view of the same, the appeals are dismissed. Notice to the appellants would not serve any purpose. It would be causing injustice to the respondents. Hence, the second appeals are dismissed with costs".

7.Since the learned counsel for the petitioners / appellants reported no instructions and no useful purpose would be served in ordering notice to the appellants, this Court has rightly dismissed the second appeals. It is needless to say that it is the duty of the party to approach the counsel and to follow the proceedings and it appears that the petitioners are not interested in prosecuting the matter further and this petitions have been filed only to protract the proceedings. The conduct of the petitioners in prolonging the litigation cannot be justified in the interest of the contesting respondents. Therefore, this Court is not inclined to restore the second appeals.

8.In such a view the matter, these petitions are dismissed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Sub Court, Thoothukudi.

2. The Principal District Munsif, Thoothukudi.

+ 4 cc to Mr. G. Prabhu Rajadurai, Advocate, Sa.Nos.97438 to 97441)



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ORDER DATED : 11/11/2019

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ORDER
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CMP (MD) . Nos.91 to 94 of 2019
in
SA (MD) .Nos.694 to 697 of 2009

Giving direction and etc.
as stated within.

TR (03.12.2019) 4P 7C