



C.R.P(MD)No.338 of 2010

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.338 of 2010

K.Rajadurai

... Petitioner /2nd Appellant/
2nd Petitioner

Vs.

1.K.M.Habib Rahman

2.K.J.V.Seetharaman

3.P.Petchiammal

4.R.P.Karthikeyan

5.R.P.Subburaman

6.R.P.Sivakumar

7.P.Senbagavalli

8.P.Valliambigai

...Respondents/Respondents/
Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order made in C.M.A.No.17 of 1999 by the Sub-Court, Palani, dated 01.10.2009 confirming the fair and decreetal order made in I.A.No.80 of 1999 in O.S.No.620 of 1990 by the District Munsif Court, Palani, dated 02.11.1999.



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For Petitioner : Mr.D.Venkatesh

For R1 : Mr.M.P.Senthil

ORDER

The plaintiff in O.S.No.620 of 1990 on the file of the District Munsif Court, Palani is the revision petitioner.

2. The suit was dismissed for default and to restore the same, the plaintiff had filed I.A.No.80 of 1999 and the same was dismissed on the ground that the petitioner is not interested in prosecuting the suit. Challenging the same, the petitioner had filed C.M.A.No.17 of 1999 on the file of the Sub Court, Palani. The appeal was also dismissed. Aggrieved over the same, the present revision petition has been filed.

3. According to the learned counsel appearing for the petitioner/plaintiff, the suit was filed for the relief of declaration of title and permanent injunction. Due to diarrhea, he could not appear before the Court on 11.11.1998 and the present application to restore the suit has been filed within time. Therefore, the trial Court as well as the appellate Court ought to have considered it sympathetically and should have allowed the said application. Since he has got a good case on merits, the revision petition may be allowed on payment of cost.



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4. Per contra, the learned counsel appearing for the respondent herein had contended that the petitioner is trying to drag on the proceedings. On an earlier occasion also, on the same ground, the suit was left to be dismissed for default and it was restored. For the second time, the petitioner has played the same trick. Hence, he prayed for sustaining the orders passed by the trial Court as well as the appellate Court.

5. I have carefully considered the submissions made on either side and perused the material records.

6. It could be seen from the records that the suit is of the year 1990. The defendants have filed their written statement and thereafter, filed I.A.No.978 of 1995 and 979 of 1996 to take up the suit on an emergent basis. In the said applications, the plaintiff/petitioner had filed a counter that there is no urgency to conduct the suit. Thereafter, when the suit is posted in the list for trial on 21.03.1996, the petitioner had left it to be dismissed for default. The petitioner had filed I.A.No.1199 of 1996 to restore the suit. The said application was allowed and it was posted on 11.11.1998 for further hearing. Even on the said date, alleging



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the same reasons, namely diarrhea, the petitioner had not appeared and again the suit was dismissed for default. Thereafter, the petitioner has filed I.A.No.80 of 1999 to restore the suit. The narration of above said dates and events will clearly show that the plaintiff has no interest to prosecute the suit. The suit was filed 34 years back and the plaintiff has successfully dragged on the proceedings. Considering the above said facts, the trial Court has rightly dismissed the application filed under Order 9 Rule 9 of Code of Civil Procedure. There are no merits in the revision petition.

7. Hence, this Civil Revision Petition stands dismissed. No costs.

16.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1. The Sub-Court,
Palani.
2. The District Munsif Court,
Palani,
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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