

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.01.2020

PRONOUNCED ON : .02.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.3574 of 2009

1.Rafiqua Asroph Ali
2.A.Mohammed Riazudeen
3.A.A.Mohammed Shriazudeen ...Petitioners/
Plaintiffs

Vs.

1.S.Ravichandran
2.R.Niranjan
3.R.Avinash
4.Minor R.Vikash
Represented by his father and guardian viz., S.Ravichandran
5.A.Meril Rayen
6.Vasanthi D.Keshwani ...Respondents/
Defendants

PRAYER: This Civil Revision Petition has been filed under Section 115 of CPC to set aside the fair and decreetal order of the learned III Additional City Civil Judge at Chennai, dated 08.09.2009 in Unnumbered I.A.No. of 2009 (SR.No.26409 of 2009) in I.A.No.17446 of 2007 in O.S.No.7321 of 2006.

For Petitioners : Mr.P.Valliappan

R1 : Died

For R2, R3, R4,
R5 & R6 : No appearance

For R6 : Mr.R.Vishnu

ORDER

This Civil Revision Petition has been filed against the order passed by the learned III Additional City Civil Judge, Chennai, in unnumbered I.A.No. of 2009 (SR.No.26409 of 2009) in I.A.No.17446 of 2007 in O.S.No.7321 of 2006, dated 08.09.2009.

2 The plaintiffs in the suit O.S.No.7321 of 2006 are the revision petitioners herein.

3 Brief facts of the case:

(i) The revision petitioners/plaintiffs have filed a suit in O.S.No.7321 of 2006, before the learned III Additional Judge, City Civil Court, Chennai, for specific performance of the suit sale agreement dated 11.09.2004. In the said suit, the first defendant had filed written statement on behalf of the defendants 1 to 4, alleging that since the plaintiffs have not come forward to comply with the terms of the suit sale agreement, he had sold the property to sixth defendant vide Sale Deed dated 06.07.2006 and the same was registered before the Competent Sub-Registrar. The said suit was instituted on 30.08.2006 and it was dismissed for default on 08.08.2007.

(ii) Thereafter, I.A.No.17446 of 2007 was filed under Order 9 Rule 9 of CPC for restoration of the suit, which was dismissed for default and the said application viz., IA.No.17446 of 2007 was allowed on imposition of cost of Rs.300/- to be paid to the learned counsel appearing for the respondents 1, 4 & 6 and the same has to be paid on or before 29.06.2009. But, the cost amount was not paid and memo has also not been filed and accordingly, they filed an unnumbered I.A.No. of 2009 to extend the time limit for payment of cost of Rs.300/- and the same was dismissed as not maintainable. As against the said order, the plaintiffs have preferred this Civil Revision Petition before this Court.

4 Heard the learned counsel for the petitioner and the learned counsel for the six respondent and perused the materials placed on record.

5 The learned counsel for the petitioner would contend that as against the consequential order of dismissal, they have also filed an application in CMA(SR).No.88 of 2009 and the same is pending.

6 After going through the order passed by the Trial Court

it is seen that when the suit was dismissed for default, I.A.No. 17446 of 2007 was filed for restoration of suit and the same was allowed on imposition of cost of Rs.300/- and the cost has to be paid on or before 29.06.2009. But, when the matter was called on 30.06.2009 cost was not paid and the said IA was dismissed. Subsequently, an unnumbered IA.No. 2009, was filed under Section 148 of CPC before the learned XIII Additional Judge, City Civil Court, Chennai, to extend the time limit for payment of cost of Rs.300/- and the same was rejected on the ground that the petition is not maintainable after expiry of the time limit.

7 The learned counsel appearing for the respondent would rely upon the Division Bench judgment reported in 2006 (3) CTC 418 – *[Gowri Ammal Vs. Murugan and others]*, wherein, this Court has held that even after expiry of the time limit, the petition under Section 148 of CPC is maintainable. Accordingly, the same is followed in the judgment reported in 2015 (1) CTC 271 – *[Kumarasamy and another Vs. Palaniyammal]*. Accordingly, this Court holds that the findings rendered by the Lower Court is liable to be vacated and taking into consideration that on the very next day the petition has been filed, I am inclined to allow this Civil Revision Petition.

8 In the result, the Civil Revision Petition stands allowed to the limited extent as indicated above and the order passed by the learned III Additional City Civil Judge, Chennai, in Unnumbered I.A.No. of 2009 (SR.No.26409 of 2009), is hereby set aside and the unnumbered IA (SR.No.26409 of 2009) is restored to file as maintainable and the same stands allowed. The Lower Court is directed to number IA and assign the number and the same shall stand allowed. The Lower Court is directed to deal IA.No.17746 of 2007 in the manner known to law. No costs.

.02.2020

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Index : Yes / No
Internet : Yes

To
The III Additional City Civil Judge, Chennai.

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CRP.(NPD).No.3574 of 2009

RMT.TEEKAA RAMAN., J
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Pre-Delivery Judgment
in
CRP.(NPD).No.3574 of 2009

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