

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1751 of 2018

Zion Pentecostal Church, Vellore.

Rep. By its Superintending Pastor

Immanuel Paul, S/o Paul,

No.8, Palar River Bund,

Near Old Katpadi Bridge,

Vellore District.

.. Appellant/Petitioner

Versus

1.Kanagasundari

2.Wilson

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Order 43 Rule 1(c) of the Civil Procedure Code against the fair and decreetal order dated 02.04.2018 made in I.A.No.02 of 2018 in O.S.No.40 of 2015 on the file of the Principal District Judge, Vellore.

For Appellant : Mr.S.William

For Respondent : Mr.PA.Sudeshkumar

JUDGMENT

Heard Mr.S.William, learned counsel for the appellant, and Mr.PA.Sudeshkumar, learned counsel for the respondent, through Video Conferencing, due to COVID-19 pandemic.

2. This Civil Miscellaneous Appeal is directed against the impugned fair and decreetal order dated 02.04.2018 passed in I.A.No.02 of 2018 in O.S.No.40 of 2015 by the learned Principal District Judge, Vellore, refusing to restore the suit which was dismissed for default on third occasion.

3. The appellant herein is the plaintiff and the respondents herein are the defendants in the suit. For better understanding, the parties will be referred to as arrayed in the suit before the Court below.

4. Originally, the plaintiff filed a suit in O.S.No.79 of 2009 seeking for declaration of title and for permanent injunction before the learned Principal District Munsif Court, Vellore. In the said suit, a written statement was filed by the defendants raising pecuniary jurisdiction before the Court. Learned Principal District Munsif Court, Vellore, finding that it is not having the jurisdiction as the suit is valued more than 10 lakhs, returned the plaint and after re-representation before the learned Principal District Court, Vellore, the same was taken taken on file and numbered as O.S.No.40 of 2015.

5. Thereafter, issues were framed on 14.09.2016 and posted for trial on 22.02.2017. However, when the matter was taken up on 22.02.2017, the plaintiff was called absent in the forenoon and therefore, the suit was dismissed for default. But, in the afternoon, the plaintiff appeared before the Court and thereby filed a petition under Order 9 Rule 9 CPC to restore the suit and based on the said petition, the said suit was restored. Subsequently, on 22.02.2017, the plaintiff filed his proof affidavit and Exs.A1 to A19 produced by him were marked. The case was posed for cross-examination of PW1 on 03.03.2017, 22.03.2017, 12.04.2017 and 18.04.2017, but, he remained absent in all these four hearing dates and therefore, the suit was again dismissed for default on 18.04.2017. Immediately, he filed I.A.No.142 of 2017 under Order 9 Rule 9 of CPC seeking to restore the suit. Learned Court below allowed the said application on 09.08.2017 imposing the costs of Rs.10,000/- and posted the suit for continuation of trial on 06.09.2017. Subsequently, the Presiding Officer of that Court went on leave from 01.11.2017 and therefore, when the matter was listed before the In-charge Court on 29.11.2017, the plaintiff was called absent and hence, on third occasion, the suit was dismissed for default with costs of Rs.10,000/- to be payable to the defendants. Although the plaintiff moved I.A.No.2 of 2018 seeking for restoration of the said suit, the same was dismissed by the impugned order holding that the plaintiff has not stated any satisfactory reasons for continues absent for nearly three hearings i.e. for nearly two months. Aggrieved by the same, the plaintiff has filed the present appeal.

6. Mr.S.William, learned counsel for the plaintiff/appellant herein argued that after the restoration of the suit for the second time, the case was posted for continuation of trial on 06.09.2017, but, on the said day, although the plaintiff appeared, the defendants sought time and thereby, the matter stood adjourned to 04.10.2017 and again on 01.11.2017. But, since in those two days, the Presiding Officer of the said Court went on leave and he was also not aware that the case would be called by the In-charge Court. On enquiry, he came to know that due to his non-appearance, In-charge Court called him absent and

adjourned the case to 29.11.2017. He further submitted that unfortunately, on the said date, the plaintiff, being a resource person, was invited to deliver spiritual speech at Torah Seminar Scheduled on 28.11.2017 in New Delhi. Therefore, he left the city on 27.11.2017 to board a flight from Chennai to Delhi and thereafter, after attending the Seminar, he reached Chennai only on 29.11.2017 at 9.15 hrs. and it took 5 to 6 hrs. to reach Vellore. Hence, the counsel on record for the plaintiff requested the Court, by producing the invitation of Delhi Seminar, to grant time as the plaintiff went to Delhi to attend Seminar, but, the learned Court below refused to grant adjournment and thereby, it has dismissed the suit for default. As a result of dismissal of the suit for default, the plaintiff has been put to grave prejudice, hence, as a last chance, the suit may be restored and taken it on file for disposal on merits, he pleaded.

7. Mr. PA. Sudeshkumar, learned counsel for the defendants/respondents herein argued that there must be a limit for anyone to take the Court for granted. Initially, the plaintiff has wrongly filed a suit for declaration of title and for permanent injunction before the learned Principal District Munsif Court, Vellore, which is not having the jurisdiction and it should have been filed before the Principal District Court, Vellore. Therefore, taking note of the same, learned Principal District Munsif returned the plaint and subsequently, it was re-presented before the learned Principal District Court, Vellore, however, in the meanwhile, a detailed written statement was filed on 15.11.2009 by the defendants and in addition thereto, additional written statement was also filed on 01.09.2016 taking a stand that the suit is not maintainable and therefore it should not be taken up for trial. However, for the reasons best known to him, the plaintiff wanted to keep the suit pending without allowing the Court to take up the main suit. Therefore, it is clear that he has deliberately allowed the suit to be dismissed for default three times, for, he knows that he does not have the case to defend on merits and that is the reason why he intentionally allowed the dismissal of suit for three times so as to prolong the proceeding and cause undue delay trying different methods. Therefore, the plaintiff cannot now plead for restoration of the case once again on third occasion, he pleaded.

8. I find merit on the above said submissions of the learned counsel for the respondents. The record shows that after framing the issues on 14.09.2016, when it was called on 22.02.2017, the plaintiff was absent and therefore, the suit was dismissed for default and thereafter, when the suit was restored and thereby posted the case for cross-examination of the plaintiff on 03.03.2017, 22.03.2017, 12.04.2017 and 18.04.2017,

but, in all these dates, he did not appear and therefore, the learned Court dismissed the suit for default on 18.04.2017 imposing costs of Rs.10,000/- to be payable to the defendants. But, even after making the payment, it is not known why the plaintiff did not appear before the Court when the matter was listed on 29.11.2017, and ofcourse, on the said day, the Presiding Officer went on leave, however, the matter was posted before the In-charge Court.

9. Learned counsel for the plaintiff/appellant stated that the plaintiff was invited as one of the resource person to attend Torah Seminar scheduled on 28.11.2017 at New Delhi for delivering speech and therefore, after attending the Seminar, he was unable to reach the Court due to delay in reaching Chennai, hence, by filing invitation to attend seminar and flight tickets, although his counsel represented before the Court to grant adjournment, learned Court below failed to grant the same and therefore, it has dismissed the suit for default, without giving a chance to the plaintiff to put-forth his case on merits.

10. But, this Court is unable find any merit on the above said submission, for the reason that after the dismissal of the suit for default on two occasions, namely, on 22.02.2017 and 18.04.2017, the suit was restored on those two occasions giving a chance to the plaintiff to put-forth his case. But, despite availing such opportunities, he failed to appear on the third occasion i.e. on 29.11.2017, therefore, now, he cannot seek for restoration of the suit on third occasion as a final chance. When a suit is filed, it is the bounden duty on the part of the plaintiff to be present in the Court so as to facilitate the court to give expeditious disposal. But, in the present case, the conduct of the plaintiff/appellant herein does not deserve third leniency.

11. Therefore, for the reasons stated above, I am of the considered view that the Court below has rightly rejected the application filed by the plaintiff with which I do not find any infirmity or irregularity. Hence, the Civil Miscellaneous Appeal stands dismissed. No Costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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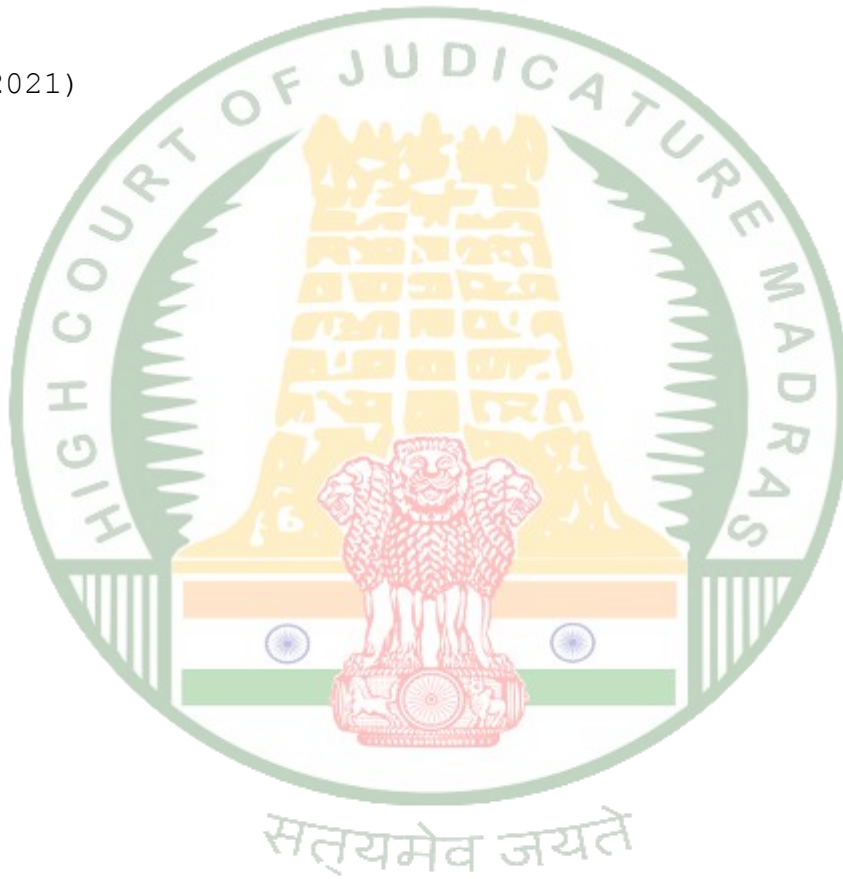
The Principal District Judge
Vellore.

+1 CC to Mr.S.William, Advocate sr 41588

+1 CC to Mr.PA.Sudeshkumar, Advocate sr 41785.

C.M.A.No.1751 of 2018

RLD(CO)
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