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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.R.P.(MD)Nos.904 & 905 of 2012

1.M.Vellaichamy
2.M.Kumarasamy : Petitioners in both C.R.Ps./Defendants

Vs.

1.K.Bharathi
2.Chinnathal @ Kaliyathal
3.Jeyalakshmi
4.Pushpavathi : Respondents/Plaintiffs

PRAYER: Civil Revision Petitions under Section 115 of C.P.C against the order dated 04.01.2012 passed in I.A.Nos.577 and 578 of 2011 in O.S.No.194 of 2010 on the file of the District Munsif Court, Palani.

For Petitioners : Mr.S.Anand Chandrasekar
For Respondents : Mr.R.Udayakumar

COMMON ORDER

These Civil Revision Petitions have been directed against the orders dated 04.01.2012 made in I.A.No.577 and 578 of 2011 on the file of the District Munsif, Palani, Dindigul District, thereby declining the prayers of the petitioners to condone the delay of 52 days in filing an application to set aside the exparte decree and also to set aside the exparte decree dated 14.06.2011.

2. The petitioners are the defendants before the trial Court, where, the respondents/plaintiffs filed a suit for declaration and permanent injunction relating to an immovable property.

3. Learned counsel for the petitioners/defendants would submit that as the respondents/plaintiffs filed a suit for declaration and consequent permanent injunction in respect of the immovable property, due to poverty, the petitioners/defendants left the place of residence, as a result, neither they prosecute the suit nor file the written statement before the Court below. Resultantly, the suit was proceeded exparte and exparte decree was passed on 14.06.2011. After coming to know about the exparte decree that has been passed on 14.06.2011, the petitioners defendants move an application in I.A.No.577 of 2011 to set aside the exparte decree. In the said process, there had occurred a delay of 52 days. Therefore, the said application was taken out in I.A.No.578 of 2011.

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4. The trial Court, finding fault with the petitioners defendants that already the suit was set exparte and on the request of the petitioners/defendants, it was reopened, declined to accept the said request and dismissed both the applications.

5. Again, continuing his argument, the learned counsel for the petitioners would submit that as the petitioners are living in object poverty, the suit has been filed against them for declaration and permanent injunction, no prejudice would be caused, if the delay is condoned and the exparte decree is set aside and thereby allowing the matter to proceed on merits. This Court may also impose any stringent terms, while allowing the Civil Revision Petitions.

6. Learned counsel for the respondents, opposing the prayer, submitted that it is not a deserving case, where the petitioners/defendants should be shown any indulgence. The reason being when the trial Court has repeatedly granted ample opportunities to file written statement, the petitioners/defendants did not bother to file the same. Therefore, the submission made by the learned counsel for the petitioners that due to poverty, the petitioners were not able to prosecute the suit is wholly untenable.

7. This Court fully agreed with the submissions made on behalf of the learned counsel for the respondents.

8. It is seen from the records that the petitioners/defendants had already been set exparte on 20.12.2010 and the order has been set aside subsequently, at the request of the petitioners. It is also seen that though enough opportunities were given, it is not known why the petitioners are not able to prosecute the suit. Therefore, no indulgence can be shown to the petitioners. Accordingly, these Civil Revision Petitions stand dismissed. No costs.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

RR

To

The District Munsif Court,
Palani.

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+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-89[F] dated 03/01/2020)
+1 CC to Mr.R.UDHAYAKUMAR, Advocate (SR-150[F] dated 03/01/2020)

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