



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP PD(MD)No.445 of 2020

and

CMP (MD)No.2644 of 2020

1.Esakkimuthu Asari
2.Esakkiammal
3.Indira @ Essakiammal
4.Ganesan
5.Nithyanandam .. Petitioners/Petitioners/Respondents

Vs.

Jospin Latha ... Respondent/Respondent/Appellant

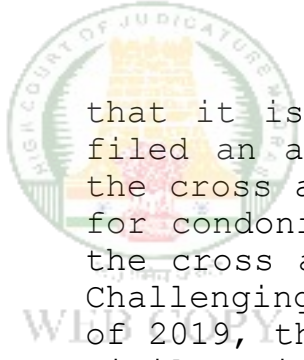
Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 05-02-2020 passed in I.A.No.7 of 2019 in A.S. No. 61 of 2015 on the file of the Principal Sub Court, Tirunelveli.

For Petitioners : Mr.S.P.Maharajan

For Respondent : Mr.H.Arumugam

ORDER

The respondent herein/plaintiff filed a suit against one Poomari Ammal and others in O.S.No.470 of 2012 on the file of I Additional District Munsif Court, Tirunelveli. The said suit was dismissed. Against which, the respondent/plaintiff filed an appeal before the Sub Court, Tirunelveli in A.S.No.61 of 2015. When the appeal was posted for arguments, the petitioners herein filed Cross Appeal before the appellate Court stating that the main defendant Poomari Ammal died and the petitioners are her legal heirs. They ought to have filed an appeal challenging the judgment and decree, because, the judgment and decree will affect not only the appellant/plaintiff, but also the deceased defendant. Since the said Poomari Ammal is an illiterate, she could not understand the real problem and also the effect of the decree and judgment and now after the death of Poomari Ammal, the present petitioners have been impleaded as respondents in the appeal. During argument they found



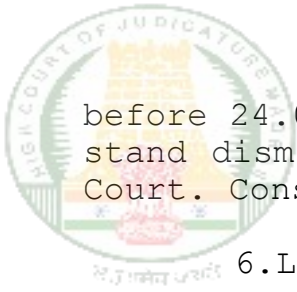
that it is a fit case for filing Cross Appeal and therefore, they filed an application to condone the delay of 1471 days in filing the cross appeal. The learned appellate Judge dismissed the petition for condoning the delay filed under Order 41 Rule 3(A) CPC in filing the cross appeal and heard the appeal and reserved it for judgment. Challenging the said order passed by the appellate Court in I.A.No.9 of 2019, the petitioners are before this Court by filing the present Civil Revision Petition.

2.The learned counsel for the petitioners would submit that originally the suit was filed against one Poomari Ammal. The said suit was dismissed. Therefore, the petitioners/legal heirs of the said Poomari Ammal, were under the impression that the suit filed by the respondent/plaintiff was dismissed and therefore, they simply appeared in the appeal and kept quiet. After the demise of the said Poomari Ammal, the present petitioners have been impleaded as legal heirs of the said Poomari Ammal in the appeal and during argument, their counsel advised that even though the suit filed by the plaintiff was dismissed, there is a finding against the defendants also and therefore, they can file a cross appeal. Therefore, they filed the cross appeal with a delay of 1471 days. The said application was dismissed by the appellate Court.

3.Heard the learned counsel appearing on either side and perused the entire materials placed before the Court.

4.The appellate Court has observed in the order that the fourth defendant himself has been examined as DW1 and he only conducted the suit and he all along appeared for the proceedings. Therefore, he knows very well the legal proceedings and its consequences. Further it is observed that the reason assigned by the petitioners/defendants that the said Poomari Ammal is an illiterate and only after her demise they have come into the picture, is not acceptable.

5.However, the appeal filed by the respondent in A.S.No.61 of 2015 is pending and it is reserved for judgment and no prejudice would be caused, if the cross appeal is heard and decided in accordance with law along with the said appeal. Further, the appeal itself was filed in the year 2015, in which, Poomari Ammal is not only the party, but, there are other respondents also in the appeal. Therefore, the contentions raised by the learned counsel for the petitioners are not acceptable. However, considering the facts and circumstances of the case and the main appeal itself is pending, this Court is of the view to allow this revision. Further, this Court is of the view that the petitioners have to compensate the respondent for the inconvenience caused to them. Under these circumstances, the order passed in I.A.No.7 of 2019 is set aside and this Civil Revision Petition is allowed on condition that the petitioners pay a sum of Rs.50,000/- to the respondent on or



before 24.03.2020. Failing which, this Civil Revision Petition shall stand dismissed automatically without any further reference to this Court. Consequently, CMP(MD)No.2644 of 2020 is closed.

6.List the matter on 26.03.2020 for compliance.

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Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Principal Sub Court, Tirunelveli.

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-11277[F] dated 12/03/2020)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-11468[F] dated 13/03/2020)

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