

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 3098 of 2014

Lakshmi (died)

1. Ravi
2. Balathandayutham
3. Rani
4. Meenakshi

...Appellants

Vs

1. Kothandaraman
- 2.. Kadirvel

....Respondents

Prayer: The Civil Miscellaneous Appeal was filed under Order 43R1(t) of the Civil Procedure Code, to set aside the fair order and decretal order dated 05.03.2014 in I.A.No.23 of 2014 in A.S.No. 57 of 2012 on the file of the II Additional Sub-Judge, Cuddalore.

For Appellants : Mr.R. Gururaj

For Respondents : No appearance

JUDGMENT

This appeal has been filed challenging the order dated 05.03.2014 passed by the learned II Additional Subordinate Judge, Cuddalore in I.A.No. 23 of 2014 in A.S. No. 57 of 2012.

2. The brief facts leading to filing of this appeal are as follows.

2.1.The first appeal filed by the appellant in A.S.No. 57 of 2012 was dismissed for default on 08.01.2014.

2.2. Thereafter, the appellant has filed I.A.No. 23 of 2014 in A.S.No. 57 of 2012 under Order 41 Rule 19 of Civil Procedure Code to restore the appeal and the learned II Additional Subordinate Judge, Cuddalore by order dated 01.03.2014, allowed I.A.No. 23 of 2014 on condition that the appellants should pay cost of Rs. 2000/- (Rupees Two Thousand only) to the respondents on or before 04.03.2014 failing which the petition shall stand dismissed. Aggrieved by the same, the plaintiffs have preferred the present civil miscellaneous appeal.

3. Heard learned counsel for the appellants. Notice to the respondents has been duly served and their names have been printed in the cause list today. But, no counsel has entered appearance till today on behalf of the respondents.

4. The Learned Counsel for the appellants submits that, since the appellants were unable to locate the counsel for the respondents, the appellants had

taken a challan and deposited a sum of Rs. 2000/- (Rupees Two Thousand only) as directed by the Court below to the credit of A.S. No. 57 of 2012 on 04.03.2014 being the deadline as fixed by the Court below under the impugned order. However, without noticing the same, the application in I.A.No. 23 of 2014 has been dismissed on 01.03.2014. The reasons given by the appellants for the restoration of the appeal, which was dismissed for default on 08.01.2014, are sufficient and satisfactory. The respondents have also been duly served. Further, the cost imposed by the learned II Additional Subordinate Judge, Cuddalore, for allowing I.A.No. 23 of 2014 is also minimal. No prejudice would be caused to the respondents if this appeal is allowed to enable the appellants to prosecute the appeal on merits in A.S. No. 57 of 2012 pending on the file of learned II Additional Subordinate Judge, Cuddalore.

5. For the foregoing reasons, the impugned order dated 01.03.2014 passed by the learned II Additional Subordinate Judge, Cuddalore in I.A. No. 23 of 2014 in A.S.No. 57 of 2012 is hereby set aside and the civil miscellaneous appeal is allowed by permitting the respondents to withdraw the sum of Rs. 2000/- (Rupees Two Thousand only) lying to the credit of A.S. No. 57 of 2012 on the file of II Additional Sub Court, Cuddalore.

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sr/rgi

6. The Learned II Additional Subordinate Judge, Cuddalore is directed to restore the appeal in A.S.No.57 of 2012 to file and hear the appeal on merits and in accordance with law.

7. With the above direction, the civil miscellaneous appeal is allowed, No costs.

02.09.2021

Index: Yes/No

Speaking Order: Yes/No
sr/rgi

To

1. The II Additional Subordinate Court, Cuddalore.

2. The Section Officer,

V.R.Section, High Court, Madras -104.

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