



CRP (PD) No.2635 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2635 of 2021

and

CMP No.19533 of 2021

1. S.C.S.Kamaraj
2. K.Surender

... Petitioners

Vs

S.Dhanapal (Died on 16.09.2018)

1. D.Rajesh
2. D.Manimozhi

... Respondents

Prayer: The Civil Revision Petition filed under Section 115 of CPC against the fair order and decreetal order dated 08.04.2021 passed in I.A. No.1 of 2019 in O.S. No.455 of 2018 passed by the Principal District Munsif Court at Salem.

For Petitioners : Mr.D.Gopinathan



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ORDER

The challenge in this Revision is to an order of the learned Principal District Munsif, Salem made in I.A. No.1 of 2019, a petition seeking restoration of the Suit which was dismissed for default on 11.07.2019.

2. The Suit in O.S. No.455 of 2018 was filed by two plaintiffs who were father and son. The first plaintiff died pending Suit. The second plaintiff who was the son was very much on record and he was prosecuting the suit. The Trial Court however on an erroneous assumption that the Suit has abated, since steps were not taken to bring on record the legal representatives of the plaintiff, had dismissed the entire suit on 11.07.2019. Hence, an application came to be filed on 17.07.2019 seeking restoration of the said suit. The same was resisted by the defendants contending that the second plaintiff was fully aware of the proceedings and therefore the petition under order IX Rule 9 will not lie.

3. The learned District Munsif who heard the application rightly



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held that the original order of dismissal itself was not correct in as much as the second plaintiff, the son was already on record. The suit should not have been dismissed as default in view of the decision of the Hon'ble Supreme Court in *Mohabir Prasad Vs. Jage Ram & Ors* reported in *AIR 1971 SC 742*. On the above conclusion, the learned trial Judge, allowed the application and restored the suit. I do not see any reason to interfere with the order of the learned Trial Judge as there is no error or material irregularity to enable me to interfere under Article 227 of the Constitution of India. Hence, the Revision fails and it is accordingly dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

01.12.2021

ab/vum

Index: Yes/No

Speaking order / Non speaking order

To:

1. The Principal District Munsif Court,
Salem.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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R.SUBRAMANIAN, J.

vum

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