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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2617 of 2017

and

C.M.P.No.13739 of 2017

1. N.Leelavathi
2. M.Ambikavathi
3. Minor Keerthana
4. Minor Lavanya
(Represented by Mother Ambikavathi)
5. N.Prakash
6. Murali
- P. Natarajan (Died) ..Appellants/Petitioner/Petitioner

Vs.

1. Tmt.Mary Wilson
2. The District Collector,
Coimbatore. ..Respondents/Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (d) of C.P.C., against the fair and decreetal order dated 11.01.2017 order passed in I.A.No.795 of 2015 in P.O.P.No.217 of 2007 on the file of the Hon'ble Principal District Court, Coimbatore.

For Appellants : M/s.P.T.Rama Devi

For Respondents : M/s.Kundavai
For Mr.C.R.Prasanan
[For R1]

Mr.S.Jeganathan
Government Advocate (CS)
[For R2]

J U D G M E N T

The Fair and Decreetal order dated 11.01.2017 made in I.A.No.795 of 2015 in P.O.P.No.217 of 2007 on the file of the Hon'ble Principal District Court, Coimbatore, is sought to be set aside in the present Civil Miscellaneous Appeal.



2. The appellants/petitioners filed P.O.P.No.201 of 2017. The said Original Petition was dismissed and in order to restore the P.O.P, an Interlocutory Application was filed by the petitioners in I.A.No.795 of 2015. The trial Court adjudicated the issues and made a finding that the petitioners are not interested in pursuing the matter. The conduct of the petitioners during the course of the hearing was considered by the trial Court. The trial Court in Paragraph 8, considered the reason for the dismissal of the Interlocutory Application, which reads as under:

"8.In the above circumstances, this Court on 23.01.2015, dismiss the main OP for non-appearance of P.W.1. Now, immediately within a limitation period this application, seeking the relief to restore the main OP filed by this petitioner. In which, the petitioner stated in his proof affidavit that due to the old age, he did not hear the correct hearing date from her counsel. The above submission made by the petitioner was strongly denied by the respondent and submitted that the petition is filed only to drag on the proceedings. It is true that if the petitioner is really having interest in Pauper OP, he has to appear before this Court for each and every hearing. But, after filing proof affidavit, inspite of repeated adjournments for the past one year, he has not appeared before this Court, which resulted in dismissal of the main petition. It shows that the petitioner is not having any interest to proceed the main OP. Keeping the Pauper OP from the year of 2007 to 2015 is causing much inconvenience to the respondent. So, the reasons submitted by the petitioner for allowing this application is not a bonafide reason and accordingly, this petition is dismissed. The point is answered accordingly.

9. In the result, this petition is DISMISSED."

3. Even after filing of proof affidavit and in spite of repeated adjournments for more than one year, the petitioners have not appeared before the Trial Court, which resulted in dismissal of the main petition. The pauper O.P was kept pending from the year 2007-2015 for about 8 years, which would certainly cause inconvenience to the opposite parties as rightly observed by the trial Court and the P.O.P was filed in the year 2007.



4. This being the factum, this Court is of the considered opinion that the reasons furnished for rejection of the Interlocutory Application filed by the petitioners under Order 9 Rule 9 C.P.C., is in consonance with the legal principles and there is no infirmity as such.

5. Accordingly, the fair and decreetal order dated 11.01.2017 made in I.A.No.795 of 2015 in P.O.P.No.217 of 2007 on the file of the Hon'ble Principal District Court, Coimbatore stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.2617 of 2017 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Court,
Coimbatore.

+1 CC to The Special Government Pleader, Sr.2890.
+1 CC to Mr.C.R. Prasanan, Advocate, Sr 2516.
+1 CC to M/s.P.T. Ramadevi, Advocate, Sr 2317.

C.M.A.No.2617 of 2017

SRA (CO)
LS (23/07/2021)