



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.06.2021

PRONOUNCED ON : 15 .07.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP (MD) No.267 of 2014

MP (MD) .No.1 of 2014

(Through Video Conferencing)

Muthulakshmi

....Petitioner/4th respondent

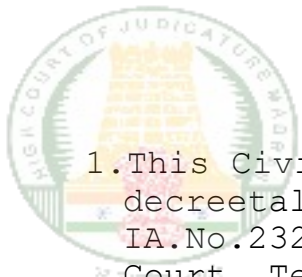
Vs

1.T.N.Mohamed Nazar
2.Soundarapandian
3.Vijaya Pandian
4.Chandra
5.Rajam
6.Maniyammal
7.Durai Rani
8.Chandra
9.Sorna Arokia Selvi
10.Jeya Mary
11.Johan Peter Rex
12.Selvi Andro
13.Sundar
14.Pappu @ Shanmughavel
15.Paramasivan
16.Kumari
17.Kavitha
18.Sumathi

...Respondents/Petitioner & R1 to R3
R6 to R19

Prayer:- This Civil Revision Petition has been filed, against the order and decreetal order dated, 06.11.2013, made in IA.No.26 of 2011 in IA.No.232 of 2006 in unnumbered appeal, by the Principal Sub Court, Tenkasi.

For Petitioner :Mr.V.Nagarajan for Mr.G.Vidhya Maheswaran
For Respondent :Mr.V.Meenakshi Sundaram-R1
Mr.P.T.Ramesh Raja-RR2 to 6, 15 to 18
RR7 to 14 - Given Up



ORDER

1. This Civil Revision Petition has been filed, against the order and decreetal order dated, 06.11.2013, made in IA.No.26 of 2011 in IA.No.232 of 2006 in unnumbered appeal, by the Principal Sub Court, Tenkasi.
2. The facts of the case are that the 5th Defendant is the Petitioner and the 1st Respondent is the Plaintiff and the other Respondents are the Defendants and the legal representatives of the 5th Respondent. The suit in OS.No.294 of 2004 was filed for declaration and permanent injunction and the suit was dismissed. The Plaintiff had filed IA.No.232 of 2006 to condone the delay of 55 days in filing the appeal and the said IA was dismissed on 26.06.2007 and thereafter, the Plaintiff had filed the present application in IA.No.26 of 2011 to set aside the said order of dismissal and take the application on file. Since the said application was allowed by the impugned order, this Civil Revision Petition has been filed.
3. The learned counsel for the Petitioner has submitted that when the earlier suit in OS.No.25 of 1988 was decreed on 26.10.1995 and the decree passed thereon was implemented by executing a sale deed by the Court, restoring IA.No.232 of 2006 on file has no legal effect and that the present suit proceedings are only to harass the Petitioner and hence, the impugned order is liable to be set aside.
4. The learned counsel for the Respondents would advance arguments in support of the impugned order, by contending that the reasons assigned by the Plaintiff are untenable and that only to prevent the Defendants from realising the fruits of the decree, the present application has been filed.
5. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
6. The present suit was filed for declaration and permanent injunction and it was dismissed. IA.No.232 of 2006 to condone the delay of 55 days in filing the appeal as against the judgement and decree of the Trial Court, was dismissed for non-payment of batta. The Plaintiff had filed the present application in IA.No.26 of 2011 to set aside the said order of dismissal and take the application on file.
7. Earlier, IA.No.79 of 2007 filed to condone the delay in filing the application set aside the order of dismissal made in IA.No.232, was allowed. Hence, the only question arisen before the court below was as to whether IA.No.232 should be taken on file or not?
8. The reasons assigned by the Plaintiff are that his Manager was looking after the case and since he was removed from work, he had taken the case files with him and hence, he was not aware of the proceedings and the said reason assigned by the Plaintiff was denied by the contesting Defendants. The court below was of the opinion that to meet the ends of justice, it would be appropriate to decide the case on merits, after a full fledged trial,



after giving opportunity to both sides and accordingly, had allowed the application, by the impugned order. This Court finds no illegality or infirmity in the impugned order and accordingly, it is to be upheld.

9. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Srcm

To

1. The Principal Sub Judge, Tenkasi

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-23065[F] dated 19/07/2021)

CRP (MD) No.267 of 2014

MGJ(23.07.2021) 3P 3C