



C.R.P.No.1278 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1278 of 2020

R.P.Loganathan

...Petitioner

Vs.

1.M.Thangammal

2.M.Kulandaisamy

3.M.Mahendran

4.M.Rajendran

5.M.Sakunthala

6.M.Pushpa

7.K.Balasubramaniam

... Respondents

(Notice to respondents 1 to 6 are given up)

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal orders dated 07.11.2019 in I.A.No.1027 of 2015 in I.A.No.243 of 2014 in O.S.No.309 of 2013 on the file of the Principal Sub Court, Erode.

For Petitioner : Mr.D.Raghu for
Mr.D.Gopal

For Respondents : Mr.V.S.Kesava



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ORDER

This revision petition is filed against the fair and decretal orders dated 07.11.2019 passed in I.A.No.1027 of 2015 in I.A.No.243 of 2014 in O.S.No.309 of 2013 on the file of the Principal Sub Court, Erode.

2. The revision petitioner is the plaintiff in O.S. No.309/2013 on the file of the Principal Subordinate Court, Erode. He filed the suit for a declaration of his title to the suit property and for a consequential relief of permanent injunction restraining the 7th defendant from interfering with his peaceful possession and enjoyment of the suit property. The suit was dismissed for default on 20.03.2014 for non payment of batta. Thereafter, the revision petitioner/plaintiff filed I.A. No.243/2014 to restore the suit, which was also dismissed for default on 19.01.2015. Subsequently, the revision petitioner/plaintiff filed I.A. No.1027/2015 to restore I.A. No.243/2014. The 7th respondent / 7th defendant filed a counter and after full contest, the learned Principal Subordinate Judge, Erode, dismissed the said application vide his orders dated 07.11.2019 by



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WEB.COM observing thus:

"5. The sole contention of the petitioner to allow the petition is that due to over sight he has failed to file the batta in I.A. No.243/14 on 19.01.2015. Though this Court considers that a party should not be denied a right of fair trial, but the petitioner have not come up with appropriate reason seeking restoration of the petition in I.A. No.243/14. The only reason for the petitioner is that due to over sight he has not filed the batta. But from the records and from the adjudication notes of this Court in I.A. No.243/14, it could be perceived that continuously the petitioner has not chosen to file the batta nor taken necessary steps, though the petitioner was given ample opportunities as detailed out in para 2 of the order. Hence this Court would find it appropriate that the petitioner has to come up with the reasonable cause for restoration of petition I.A. No.243/14. But the petitioner has mentioned the reason that on the particular date i.e., 19.01.2015 the batta was not filed by the petitioner due to over sight in I.A. No.243/14. The reason mentioned by the petitioner do not match with the actual circumstances as from the date of institution of IA No.243/14 i.e. from 04.04.2014 till



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19.01.2015 the batta have been presented by the petitioner for about 4 times and for every time the batta was returned for some compliance, the same is understood that it is not rectified by the petitioner. Lastly on 01.12.2014 for issuing of private notice is also permitted by the court at the request of the petitioner even the opportunity of issuing private notice is also not exercised by the petitioner. Under the above circumstances, this court do not find the reason mentioned by the petitioner that due to over sight he has failed to pay the batta on 19.01.2015. Hence this court find it appropriate that the petition is liable to be dismissed.

3. In the affidavit filed along with the petition in I.A. No.1027/2015 the revision petitioner/plaintiff has stated that he did not pay batta "by oversight" in I.A. No.243/2014. This reason is not convincing and all the observations made by the trial court are based on well settled principles of law and since the suit is of the year 2013, I do not see any reason to interfere with the findings recorded by the trial court. Accordingly, this Civil Revision Petition is liable to be dismissed.



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4. In the result,

- i. the Civil Revision Petition is dismissed. No costs.
- ii. the fair and decretal orders dated 07.11.2019 in I.A.No.1027 of 2015 in I.A.No.243 of 2014 in O.S.No.309 of 2013 on the file of the Principal Sub Court, Erode, is upheld

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

- 1.The Principal Sub Court, Erode.
- 2.The Section Officer, VR Section, High Court, Madras.

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