



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
08.04.2022	06.05.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A (MD)No.187 of 2022

and

C.M.P (MD)No.1616 of 2022

Ramesh Babu

.. Appellant /
Petitioner / Appellant

Vs

1.Rajeshwari

2.Mahalakshmi

3.The District Collector,
Theni District, Theni.

.. Respondents /
Respondents / Respondents

PRAYER: Appeal filed under Order 41(1)(t) and Section 104 of Civil Procedure Code, against the fair and decreetal order, dated 21.12.2021, passed in I.A.No.117 of 2021 in A.S.No.5 of 2021, by the Additional District and Sessions Court, Theni [Now at Periyakulam].

For Appellant	: Mr.M.R.Sreenivasan
For Respondent No.1	: Mr.Kadarkarai
For Respondent No.2	: Mr.R.Shankar Ganesh
For Respondent No.3	: Mr.M.Sarangan,
	Additional Government Pleader.

JUDGMENT

This Civil Miscellaneous Appeal is directed against the fair and decreetal order, dated 21.12.2021, passed in I.A.No.117 of 2021 in A.S.No.5 of 2021, by the Additional District and Sessions Court, Theni at Periyakulam.

2.The plaintiff is the appellant herein. The appellant / plaintiff filed the suit in O.S.No.65 of 2009 seeking the relief of declaration of title and for permanent injunction. After trial, the same was dismissed and hence, he filed appeal in A.S.No.5 of 2021. The defendants / respondents in the appeal, have filed written arguments. Despite several adjournments, the appellant has neither advanced argument nor filed written argument and hence, the appeal was dismissed for default on 19.08.2021. For restoration of the appeal to the file of the Court, the appellant / plaintiff has filed I.A.No.117 of 2021 and the same was dismissed by order dated 21.12.2021 and hence, the Civil Miscellaneous Appeal.



3.The learned counsel for the appellant / plaintiff would contend that the Trial Court should have given an opportunity to the appellant / plaintiff to submit his merit in this case and wrongly understood the scop of Order XLI, Rule 19 of the Civil Procedure Code and he has got documents to substantiate his claim and hence, prayed for allowing the appeal.

4.Heard the learned respective counsel for the respondents / defendants.

5.After hearing both sides and perusal of the records, I find that the appellant / plaintiff filed O.S.No.65 of 2009 for declaration of title and for permanent injunction. After contest, the suit was dismissed on 18.12.2020 for not proving the alleged Will or the adoption, as stated in the plaint. Against which, appeal was filed and the appeal was posted in the list for adducing arguments on the side of the appellant on 27.07.2021, 02.08.2021, 09.08.2021, 13.08.2021, 17.08.2021 and 19.08.2021. Despite several opportunities have been given, the appellant / plaintiff has not chosen to advance either oral argument or written argument and hence, having left with no other option, the lower appellate Court has dismissed the appeal suit.

6.In the petition seeking restoration, the appellant / plaintiff has stated that he had some leg sprain and could not able to move out of the house for more than one year. No medical certificate or medical evidence has been produced before the lower appellate Court, assumes significance. Except the bald allegation that he has got merit in the main appeal, there is no sufficient ground for restoration or not using the opportunity of several hearings and accordingly, I find that the lower appellate court has rightly dismissed the appeal and hence, I do not find any merit for interfering with the orders passed in the said interlocutory application. Therefore, this Civil Miscellaneous Appeal is devoid of merits and accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

smn



To

1.The Additional District and Sessions Judge,
Theni at Periyakulam.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.M.R. SREENIVASAN, Advocate (SR-23542[F] dated
06/05/2022)

+1 CC to M/s.S. KADARKARAI, Advocate (SR-23525[F] dated
06/05/2022)

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