

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction



Monday, the Seventeenth day of October Two Thousand and Twenty Two

PRESENT

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The Hon`ble Mr.Justice B.PUGALENDHI

CMP(MD) . No.1730 of 2022
in
SA(MD) .No.636 of 2021

Geetha Anand,
W/o.Sriram Anand
Through Her Power
Agent Sindhu

... Petitioner/Appellant/Appellant/ Defendant

Vs

1 R.Alagukumar

2 S.R. Subbiah

... Respondents/Respondents/Respondents/
Plaintiff

Prayer :-

This Civil Miscellaneous Petition filed under Order 41 Rule 19 of C.P.C., praying this Court to set aside the order dated 24.01.2022 which is dismissed for non-prosecution and restore the S.A.(MD) No. 636/2021 on the file of this Court.

Prayer in SA(MD) . 636/ 2021 :

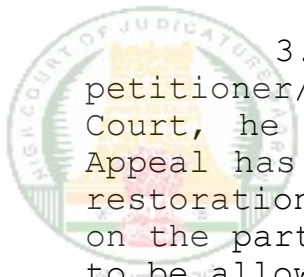
This Second Appeal filed Under Section 100 of C.P.C., praying this Court to set aside the judgment and decree dated 04.08.2021 made in A.S. No.12 of 2020 on the file of the Subordinate Court, Theni, confirming the judgment and decree dated 31.01.2020 made in O.S. No.47 of 2012 on the file of the District Munsif, Bodinayakanur.

ORDER:-

This Civil Miscellaneous Petition coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.R.Suriyanarayanan, Advocate for the Petitioner and of Mr.H.Thayumanaswamy, Advocate for the respondents, this Court made the following order:

This application is filed to set aside the order of dismissal for non-prosecution of second appeal in SA(MD) No.636 of 2021, dated 24.01.2022.

2.When the above Second Appeal was listed for final disposal on 10.01.2022, 21.01.2022 & 24.01.2022, there were no appearance in support for the appellant and therefore, this Court dismissed the Second Appeal for non-prosecution on 24.01.2022.



3.The learned counsel appearing for the petitioner/appellant submits that since he was held up in Court, he could not appear before the Court and hence the Second Appeal has been dismissed for non-prosecution. This application for restoration of the Second Appeal is filed in time and non-appearance on the particular day is neither willful nor wanton and hence it has to be allowed.

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4.The learned counsel appearing for the respondents submits that the Second Appeal has not yet been admitted.

5.Considering the issue involved in this Second Appeal, this Court suggested the counsel on either side to settle the dispute between the parties amicably. The petitioner/appellant under the guise of settlement has taken time and finally allowed the Second Appeal to be dismissed for non-prosecution.

6.The learned counsel appearing for the petitioner/appellant submits that the petitioner is a tenant in the suit schedule property. The respondents' grand mother obtained a loan from the petitioner by way of Mortgage deed dated 16.07.1982 and filed a suit in O.S.No.47 of 2012, for recovery of possession based on the above mortgage deed, through her power agent, before the District Munsif Court, Bodinayakanur. Pending the suit, she died and the respondents proceeded the suit based on the settlement deed, dated 14.07.1999. The petitioner contested the suit on the ground that without seeking the relief of redemption, the suit cannot be proceeded. However, the suit was decreed in favour of the respondents on 31.01.2020, as against which, appeal in A.S.No.12 of 2020 was filed and the same was dismissed on 04.08.2021. Aggrieved over the concurrent findings of the Courts below, the petitioner/appellant filed the above second appeal.

7.Learned counsel for the respondent submits that it is not the case of redemption of mortgage and it is for recovery of possession.

8.Considering the issue involved and the fact that the Second appeal is not yet admitted, this petition is allowed. However, on a condition that the petitioner/appellant shall be ready to argue the second appeal for final disposal on the next date of hearing.

9.Post the Second Appeal on 03.11.2022, immediately after admission.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/11/2022

Sub Assistant Registrar (CS)



To

1. The Subordinate Judge, Theni.
2. The District Munsif, Bodinayakkanur.

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ORDER DATED : 17/10/2022

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ORDER

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CMP(MD). No.1730 of 2022

in

SA(MD).No.636 of 2021

Giving direction and etc. as stated
within.

MGJ(03.11.2022) 3P 3C