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C.R.P(NPD)No.4051 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (PD) No.4051 of 2019
and C.M.P.No.26593 of 2019

1.Muthammal

Shanmuga Ganesan (died)

2.Perumal

3.Danapal

4.Jayaraman

5.Santha

6.Vijay Anandan

7.Vijaya Lakshmi

...

Petitioners

Vs.

1.Jayamurthy

2.Babu

...

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair order and decretal order dated 09.02.2017 made in I.A.No.1189 of 2016 in O.S.No.134 of 2012 on the file of

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Subordinate Judge, Athur and allow the above Civil Revision Petition.

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For Petitioners : Mr.Annagandhi V.R.

For Respondents : Mr.R.Lokeshwaran

ORDER

This Civil Revision Petition has been filed to set aside the fair order and decretal order dated 09.02.2017 made in I.A.No.1189 of 2016 in O.S.No.134 of 2012 on the file of Subordinate Judge, Athur and allow the above Civil Revision Petition.

2. The revision petitioners 1 to 4 are plaintiffs in the suit. Originally, the suit was filed before the District Munsif Court, Attur and subsequently it was transferred to Sub Court, Attur for permanent injunction and restraining the respondents herein and their men from in any way interfering with the petitioners peaceful possession and enjoyment of the suit property. This being so, the second plaintiff therein viz., Shanmuga Ganesan died on 23.08.2014, for which, the revision petitioners have filed a impleading application in I.A.Nos.335 to 337 of 2016 and the same was allowed by the Trial Court on 23.03.2016. Thereafter, the revision petitioners have supposed



to file the amendment application before 06.07.2016. Since, steps were not taken, the suit in O.S.No.134 of 2012 was dismissed for default on 06.07.2016.

3. Thereafter, the revision petitioners have filed another application in I.A.No.1189 of 2016 on 06.09.2016 under section 5 of the Limitation Act and Section 151 of Civil Procedure Code to condone the delay of 380 days for taking steps to implead the legal heirs of the deceased second plaintiff (Shanmuga Ganesan), instead of filing the condone delay application to set aside the ex-parte decree passed on 06.07.2016. Hence, the Trial Court has dismissed the I.A.No.1189 of 2016 on 09.02.2017. Aggrieved over the same, the petitioners have come forward with the present Civil Revision Petition.

4. Learned counsel for the petitioners submitted that the revision petitioners have wrongly mentioned the prayer in Section 5 application in I.A.No.1189 of 2016, instead of filing a petition to condone the delay for restoring the suit, which was dismissed for default on 06.07.2016 and without giving any opportunity to rectify the mistake, the Trial Court has dismissed the said application on 09.02.2017. Hence, he prayed for allowing this Civil



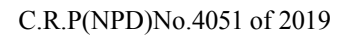
Revision Petition.

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5. Heard the learned counsel on either side and perused the materials available on record.

6. In this case, admittedly, the impleading application was allowed by the Trial Court on 23.03.2016, the revision petitioners ought to have filed the application for amending the cause title since, the same was not filed, the suit was dismissed for default on 06.07.2016. Then, the revision petitioner filed I.A.No.1189 of 2016 under Section 5 of the Limitation Act r/w section 151 of Civil Procedure Code. But, in the affidavit, he has mentioned a petition to implead the Legal Heirs of the deceased.

7. For the aforesaid reason, the Trial Court has dismissed the application on 09.02.2017. In the affidavit, it has been mentioned that a petition to implead the Legal Heirs of the deceased second plaintiff. At this juncture, it is pertinent to note that the registry ought to have returned the papers to rectify the defects instead, the same was numbered and brought before this Court for hearing and moreover, instead of directing the petitioner



I.A.No.1189 of 2016 on 09.02.2017.

9. This Civil Revision Petition is allowed with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

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