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CRP.NPD No.2132 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

C.R.P.NPD No.2132 of 2023

Bujjiammal ... Petitioner

Vs

1. K.S.Hemanth Kumar
2. Elumalai @ Naguram
3. A. Kumar
4. R. Hamsa ... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of dismissal of C.M.A.No.9 of 2022 dated 13/4/2023 passed by the Hon'ble IV Additional District & Sessions Judge, Tiruvallur, confirming the fair and decreetal order of dismissal dated 20/4/2022 made in I.A.No.552 of 2018 in O.S.No.23 of 2007 by the Hon'ble Principal Sub-Judge, Ponneri.

For Petitioner ... Mr.E.Prabu

For respondents ... Mr.P.V.Murlidhar
Caveator for R.1

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ORDER

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This Civil Revision Petition is filed aggrieved by the dismissal of C.M.A.No.9 of 2022, dated 13/4/2023 on the file of the learned IV Additional District and Sessions Judge, Tiruvallur.

2. The facts in brief are that the petitioner has filed O.S.No.23 of 2007 against the respondents/defendants seeking for declaration that the plaintiff is the absolute owner of schedule of property and for consequential permanent injunction. During the pendency of the suit, fourth defendant was added as one of the parties and the suit was posted for carrying out the amendment and for filing amended copy of the plaint.

3. When the matter was called on 24/9/2012, for filing amended copy of the plaint, the petitioner's counsel could not attend the Court and thereby, the suit was dismissed for default. Hence, the petitioner has filed I.A.No.552 of 2018 under Order IX Rule 9 of the Code of Civil Procedure for restoring O.S.No.33 of 2007 and the same was dismissed by the trial Court on 20/4/2022. Aggrieved by the same, the petitioner



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has preferred C.M.A.No.9 of 2022 but the same was also came to be dismissed on 13/4/2023, thereby, the present Civil Revision Petition is filed.

4. Heard Mr.E.Prabu, learned counsel for the petitioner and Mr.P.V.Murlidhar, Caveator/first respondent.

5. On going through both the order, the basic reason for dismissal of the application is that a petition for restoration of the suit was filed, after six long years, from the date of dismissal. The observations of the trial Court as well as the Appellate Court in holding that the application for restoration of the suit was filed, after six long years is factually incorrect. Both the Courts have failed to appreciate the facts properly.

6. It is borne out from the record that the suit in O.S.No.23 of 2007 was dismissed, on 24/9/2012, whereas, the application for restoring the suit was filed, on 3/10/2012 i.e., within ten days, from the date of dismissal, the application for restoration was filed. It is also borne out from the record that the trial Court has kept the petition pending for six long years to process it and returned it only on 21/8/2018 and the



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petitioner has immediately resubmitted with complying petition and the same was admitted and numbered as I.A.No.552 of 2018.

7. The respondents/defendants who have filed counter in I.A.No.552 of 2018, before the trial Court did not allege anything that the petitioner has filed an application for restoration after six long years. The only ground on which the respondents/defendants has opposed I.A.No.552 of 2018 for restoration of the suit is that the petitioner/plaintiff has not given valid reasons for not carrying out the amendments as directed.

8. It is surprising to note that the trial Court which could not number the petition for six long years has gone to the extent of making a comment that the petitioner/plaintiff has waited for six long years to file the application. In fact, the mistake lies with the trial Court and not with the plaintiff and for the mistake committed by the trial Court, the petitioner/plaintiff is punished and has made to prefer an appeal in C.M.A.No. 9 of 2022 and unfortunately, the Appellate Court also could not properly gone through the records or call for the records, and dismissed the appeal by echoing incorrect observations of the trial Court that application is filed after six long years from the date of dismissal,



which is factually incorrect.

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9. In case, if the application is filed after six years, obviously, the petition under Order 9 Rule 9 of the Code of Civil Procedure should not have been numbered in case if it is not associated with a petition under Section 5 of the Limitation Act to condone the delay. Admittedly no such application is filed.

10. Another procedural irregularity committed by the trial Court is that whenever an application for amendment has been considered and allowed and in case if the amendment is not carried out as directed by the Court, within the time frame, the plaintiff shall not be punished for dismissal of the suit. Order 6 Rule 18 speaks that in case if the amendment is not carried out, the plaintiff shall not be permitted to carry out within the time fixed by the Court, the Court shall proceed with the proceedings as if there is no amendment at all. The default committed only in respect of carrying out the amendment for which the Court shall not dismiss the suit. That too it is the case of the petitioner that only on one day, i.e., on 24/9/2012 his Advocate could not attend the Court on account of some inconvenience, thereby, Court could have extended the



time to carry out the amendment.

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11. In view of the above, this Civil Revision Petition is allowed and order of the learned Principal Sub-Judge, Ponneri, in I.A.No.552 of 2018 in O.S.No.23 of 2007 and also the order passed in C.M.A.No.9 of 2022 are hereby set aside and I.A.No.552 of 2018 filed by the petitioner in the trial Court is allowed. Suit is restored back to its position. Petitioner shall be permitted to proceed with the consequential amendment on account of impleading Defendant No.4.

12. It is submitted that the respondents/defendants have filed O.S.No.23 of 2007, seeking similar relief against the plaintiff and in both the cases are right for trial. The trial Court shall club both the cases and dispose of the same at once by way of a common trial, as expeditiously as possible, not later than six months, from the date of the order. Registrar Vigilance of the concerned Court is directed to call for the explanation of the concerned Officer responsible for the delay in not processing the I.A., for 6 long years and place it before the concerned Administrative Judge for further action.



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Index: Yes/No

Neutral Citation: Yes/No

To

1. IV Additional District & Sessions Judge, Tiruvallur
2. The Principal Sub-Judge, Ponneri.

Dr.D.NAGARJUN,J

mvs.

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