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C.M.A.No.3281 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3281 of 2017
and C.M.P.No.20708 of 2017

Thara

...Appellant

Vs.

1. Yamuna
2. Ashokan (a) Ashok Kumar
3. Tamilarasan
4. N.Ravi

...Respondents

PRAYER: The Civil Miscellaneous Appeal filed under Order XLIII Rule 1(t) of C.P.C, against the order and decreetal order dated 09.10.2017 made in C.M.P.No.10 of 2017 in A.S.No.361 of 2013 on the file of XV Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.A.Rajesh Kanna

For Respondents : Notice dispensed with for R1 to R3

: Mr.A.Raj Prince for
M/s.R.Thiagarajan for R4

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the order and decreetal order dated 09.10.2017 made in C.M.P.No.10 of 2017 in



C.M.A.No.3281 of 2017

A.S.No.361 of 2013 on the file of XV Additional Judge, City Civil Court,
Chennai.

2. Heard the learned counsel for the petitioner as well as the learned counsel for the fourth respondent. It is not in dispute that respondents 1 to 3 are the siblings of the appellant. Hence, notice to respondents 1 to 3 is dispensed with.

3. The case of the appellant is as follows :

(i) The appellant filed a civil suit in O.S.No.7842 of 2009 on the file of V Assistant Judge, City Civil Court, Chennai seeking to declare the sale deed dated 14.12.2006 executed by the 2nd respondent in favour of the 4th respondent as null and void; to divide the suit schedule of property into four equal shares and allot one such share in favour of the appellant; to divide the suit schedule property by metes and bounds; to restrain the respondents from interfering with the appellants peaceful possession and enjoyment of the suit schedule property; and to direct the respondents to pay the cost of the suit. However, the Trial Court dismissed the said suit by judgment and



C.M.A.No.3281 of 2017

decree dated 03.4.2013.

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(ii) As against the dismissal of the said suit, the appellant preferred an appeal in A.S.No.361 of 2013 before XV Additional Judge, City Civil Court, Chennai. However, the same was dismissed for default. There was some delay in filing the petition to condone the delay. Therefore, seeking to condone the delay of 235 days in filing the restoration petition, the appellant filed CMP.No.109 of 2015 and it was allowed on 03.2.2017. Thereafter, a restoration petition was filed in CMP.No.10 of 2017. However, it was dismissed on 09.10.2017 on the ground that the delay could not be excused as a matter of judicial generosity and that the appellant never entered into the witness box to explain the reasons for the delay of 235 days in filing the condonation petition to restore the appeal, which was dismissed for default. Challenging the same, the above appeal has been filed.

4. The learned counsel for the appellant submits that though the Lower Appellate Court already allowed the petition for condonation of delay by order dated 03.2.2017, it mechanically dismissed the restoration petition without assigning any valid reason, which is, per se, unsustainable.



C.M.A.No.3281 of 2017

WEB COPY

5. The suit is of the year 2009. The appeal is of the year 2013. It is not proper for the Lower Appellate Court to dismiss the petition for restoration without assigning any valid reason, after allowing the petition for condonation of delay, as the main matter has to be adjudicated on merits. However, the appellant should be put on terms for the delay occurred.

6. Pursuant to that, the learned counsel for the appellant, on instructions, submits that the appellant is ready to pay costs to the fourth respondent.

7. The learned counsel for the fourth respondent did not dispute the facts submitted by the learned counsel for the appellant and submitted that this Court may fix a time, within which, the amount should be paid.

8. In view of the submission made by the respective learned counsel for the appellant as well as the fourth respondent, the civil miscellaneous appeal is allowed and the order dated 09.10.2017 passed by XV Additional



C.M.A.No.3281 of 2017

Judge, City Civil Court, Chennai is set aside on condition that the appellant shall pay a sum of Rs.50,000/- (Rupees fifty thousand only) to the fourth respondent by way of demand draft within a period of one (1) week from the date of receipt of a copy of this order. On receipt of the proof of payment, the Fifteenth Additional Judge, City Civil Court, Chennai shall take the appeal on file and dispose of the same on merits and in accordance with law after hearing both the appellant as well as the fourth respondent within a period of twelve (12) weeks thereafter. Consequently, the connected CMP is closed.

31.10.2023

Office to Note : Issue Order Copy on 01.11.2023

Speaking Order : Yes/No
Index : Yes/No
NC : Yes/No

To
The Registrar, City Civil Court, Chennai.

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C.M.A.No.3281 of 2017

M.DHANDAPANI,J

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C.M.A.No.3281 of 2017

31.10.2023