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C.R.P.(NPD)Nos.3376 & 3382 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)Nos.3376 & 3382 of 2019

CRP(NPD)No.3376 of 2019

Selvaraj

.. Petitioner

VS

Kuppusamy

.. Respondent

Petition filed under Article 227 of the Constitution of India against the Judgment and decree of the learned District Judge of Cuddalore dated 27.08.2005 passed in CMA.46/2004 dismissing the appeal, confirming the fair order and decretal order of the learned Subordinate Judge of Panrutti in I.A.No.92/2004 in I.A.102/2000 in A.S.29/1998 dated 13.07.2004.

AND

CRP(NPD)No.3382 of 2019

Selvaraj

.. Petitioner

VS

1.Devaganapathi (Died)
2.Krishnasami (Died)



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3.Balasundaram

4.Thangaraj

5.Perumal (Died)

6.K.Paramanandam

(R6 brought on record as LR of the deceased R2 viz., Krishnasami vide court order dated 13.06.2019 made in CMP.Nos.5301, 5268, 5272, 5274, 5287, 5293, 5297, 5298 & 5304 of 2019 in CRP.SR.No.19519/2006 by this Court)

7.P.Ramalingam

8.P.Arumugam

9.P.Elumalai

10.P.Jeganathan

(R7 to R10 brought on record as LR of the deceased R5 viz., Perumal vide court order dated 13.06.2019 made in CMP.Nos.5301, 5268, 5272, 5274, 5287, 5293, 5297, 5298 & 5304 of 2019 in CRP.SR.No.19519/2006 by this Court)

11.D.Mahalingam

12.Pasupathy

13.Hariharan

.. Respondents

(R11 to R13 brought on record as LR of the deceased R1 viz., Devasenapathi vide court order dated 13.06.2019 made in CMP.Nos.5301, 5268, 5272, 5274, 5287, 5293, 5297, 5298 & 5304 of 2019 in CRP.SR.No.19519/2006 by this Court)

Petition filed under Article 227 of the Constitution of India against the Judgment and Decree of the Learned District Judge of Cuddalore dated 17.08.2005 passed in CMA.23 of 2005 dismissing the Appeal, confirming the Fair Order and Decreetal Order of the Learned Subordinate Judge of Panrutti in I.A.No.16 of 2003 in A.S.30 of 1998 dated 25.11.2004.

For Petitioner : Mr.Ma.P.Thangavel
(in both CRPs)



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For Respondent : Mr.R.Baskar
(in CRP.3376 of 2019)

For Respondents : Mr.K.Balaganesh (for R3, R6 to R10)
(in CRP.3382 of 2019)

Mr.R.Bhaskar (for R11 to R13)

R1, R2 & R5 – Died

R4 – Not ready notice

COMMON ORDER

O.S.No.165 of 1984 is for a declaration that the property belongs to the joint family of the plaintiffs and defendants and for consequential injunction not to interfere with the plaintiffs' peaceful possession. Yet again, the very plaintiff filed another suit before the District Munsif Court, Panruti in O.S.No.175 of 1985 and re-transferred in O.S.No.60 of 1996. That is also for the relief of declaration that the property belongs to the plaintiffs and the defendants 5 and 7, and for injunction against defendants 8 to 10 from transferring the service connection in the name of the first defendant alone. In fine, both the suits are suits for partition. The suits were decreed by the learned Principal Subordinate Judge, Cuddalore on 30.04.1987.

2.Aggrieved by the same, the fourth defendant in both the suits one Selvaraj filed A.S.Nos.29 and 30 of 1998. The appeals were dismissed



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for default on 22.01.2003. To restore A.S.No.30 of 1998, I.A.No.16 of 2003 was filed which was dismissed on 25.11.2004.

3. Similarly, in A.S.No.29 of 1998 restoration applications were filed in I.A.No.92 of 2002 and I.A.No.102 of 2000. Those applications were dismissed on 13.07.2004. Instead of filing an appeal before this Court under Order 43 of CPC, appeals were filed before the Principal District Judge, Cuddalore, which were dismissed in CMA.Nos.46 of 2004 and 23 of 2005 on 17.08.2005. Aggrieved by the same, the present Civil Revision Petitions have been presented.

4. Learned counsel appearing for the petitioner would submit that the learned Principal District Judge should not have dismissed CMA.No.46 of 2004 and CMA.No.23 of 2005, but should have returned the paper for presentation before the proper forum. He would further argue that if he is given an opportunity to argue the appeal on merits, that would put the quietus to the entire issue.

5. Learned counsel appearing for the respondent stiffly opposed the same. He would state that suits were initiated as early as in 1984 and till date the benefit of the decree has not been seen the plaintiffs.

6. I have heard Mr.Ma.P.Thangavel, learned counsel appearing for the petitioner in both civil revision petitions, Mr.R.Baskar, learned



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counsel appearing for the respondent in CRP.No.3376 of 2019, Mr.K.Balaganesh, learned counsel appearing for R3, R6 to R10 and Mr.R.Bhaskar, learned counsel appearing for R11 to R13 in CRP.No.3382 of 2019.

7.The suits are for partition. The fourth defendant had filed an appeal in time, but had let the matter go for default. In a regular appeal, it is not the party who comes before the Court, but it is the lawyer who appears on behalf of the party. For the default of the lawyer, the party cannot be punished. For this proposition, I rely upon the judgment of the Supreme Court in *Rafiq and Another v. Munshilal and Another reported in AIR 1981 SC 1400*.

8.At the same time, the decree holder also has to be compensated. If I were to set aside the order passed in the CMA's, and then, to give a direction that the appeals should be presented before the High Court, it would result in a never ending cycle of litigation.

9.In order to short on the litigation and to see that the right of appeal of a party is not taken away, I am passing the following order in exercise of the powers conferred on me under Article 227 of the Constitution of India:

(i) The orders passed in I.A.No.92 of 2004 in I.A.No.102 of 2000



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in A.S.No.29 of 1998 dated 13.07.2004 are set aside.

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(ii) Similarly, the order passed in I.A.No.16 of 2003 in A.S.No.30 of 1998 is set aside.

(iii) Qua the condition imposed is that in each of the appeals, the petitioner shall pay the respondent/plaintiff/decreed holder a sum of Rs.10,000/-. In other words, on payment of Rs.20,000/- in all by the civil revision petitioner to the contesting respondent, the applications will be allowed and the appeal will be restored on to the file.

(iv) Time for payment is four weeks.

(v) In case, the amount of Rs.20,000/- is not paid, these civil revision petitions will stand dismissed.

10. On proof of payment of Rs.20,000/-, the learned Principal Subordinate Judge is directed to restore the appeal in A.S.No.29 of 1998 on the file of the learned Subordinate Judge, Cuddalore. A.S.No.30 of 1998 on the file of the learned Subordinate Judge, Panruti shall stand restored and the appeals will be disposed of within a period of three months from the date of restoration.

11. The legal heirs having been brought on record in these civil revision petitions, it shall enure in favour of the appeal also. The cause title will be amended by filing of a memo by the appellant before the



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lower appellate court. The learned Subordinate Judge, Panruti is requested not to adjourn the matter only for the purpose of bringing on record the legal representatives. An opportunity is granted to the fourth defendant only in order to ensure that his right of appeal is not lost.

12. With the above directions, these civil revision petitions are allowed. No costs.

18.07.2023

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

vs

To

1. The District Court,
Cuddalore.

2. The Subordinate Court,
Panruti.



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V. LAKSHMINARAYANAN,J.

VS

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