



CRP(MD).No.2245 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2023

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.2245 of 2023

Dr.R.Mani

: Petitioner / plaintiff

Vs.

Nallamani Ammal

: Respondent / defendant

PRAYER: Civil Revision Petition filed under Section 115 CPC against the fair and decreetal order, dated 28.06.2019 passed in I.A.No.1 of 2019 in I.A.No.1265 of 2016 in O.S.No.29 of 2013 on the file of the Principal District Munsif Court, Tenkasi.

For Petitioner

:Mr.M.P. Senthil

For respondent

: Mr.R.J. Karthick

ORDER

This Civil Revision Petition is filed against the fair and decreetal order, dated 28.06.2019 passed in I.A.No.1 of 2019 in I.A.No.



CRP(MD).No.2245 of 2023

1265 of 2016 in O.S.No.29 of 2013 on the file of the Principal District
Munsif Court, Tenkasi.

2. According to the revision petitioner / plaintiff, he has filed a suit for the relief of declaration and for permanent injunction in respect of the 4th item of the suit property. The respondent filed a written statement and also sought for counter claim declaring the 5th item of the suit property belonging to the respondent herein and prayed for injunction. Further, the suit was dismissed for default on 28.06.2016 for non-prosecution for non appearance of the plaintiff. Thereafter, the petitioner filed an application in I.A.No.1265 of 2016 to restore the above said suit. In which it was posted to issue of notice of hearing on 23.11.2016 and the same was also dismissed for default for non-appearance. Thereafter, the petitioner filed another application in I.A.No.1 of 2019 for restoration of the earlier application filed by him in I.A.No.1265 of 2016, which was also dismissed on 28.06.2019. Challenging the same, the petitioner has filed the present revision.

3. The respondent filed his counter denying the averments made in the application.



CRP(MD).No.2245 of 2023

4. The learned counsel appearing for the respondent submitted that no sufficient reason given by the petitioner for restoring the application after a lapse of two years and hence, the learned District Munsif has rightly dismissed the said application in I.A.No.1 of 2019 vide order, dated 28.06.2019.

5. However, the learned counsel appearing for the revision petitioner submitted that the learned District Munsif allowed the application in I.A.No.305 of 2018, to condone the delay of filing the restoration application in I.A.No.1265 of 2016 in order to restore the suit on 06.03.2019. However, the learned trial Judge, dismissed the application in I.A.No.1 of 2019 filed to restore the application in I.A.No.1265 of 2016. By virtue of the disposal of the application in I.A.No. 1 of 2019, the learned counsel would submit that the entire right of the petitioner to prosecute the suit in O.S.No.29 of 2013 is being numbered, the learned trial Judge ought to have decided the same after the trial and hence, the learned trial Judge may be directed to decide the said application in I.A.No.1 of 2019 .

6. The learned counsel appearing for the respondent would



CRP(MD).No.2245 of 2023

submit that the said application has been filed after a lapse of 2 years for which, no sufficient cause shown by the petitioner herein and also submitted that in the event of allowing the application, liberty may be granted to the respondent herein for filing an additional Written statement.

7. Heard the learned counsel appearing on either side and perused the material available on records.

8. Since the trial Court has already condoned the delay in filing the above application to restore in I.A.No.305 of 2018 in I.A.No. 1265 of 2016 and since there is no serious objection on the side of the respondent allowing the application, in order to give sufficient opportunity to put forth the case, in the interest of justice, this Court is inclined to allow this Civil Revision Petition on payment of cost of Rs.3,000/- (Rupees Three Thousand only) to the respondent within a period of two weeks from the date of receipt of a copy of this order. On such payment, the trial Court is directed to restore the application in I.A.No.1265 of 2016 and proceed with the trial, failing which, the order passed by the trial Court stands confirmed. However, the respondent is given liberty to file an additional written statement by filing necessary application before the trial



CRP(MD).No.2245 of 2023

Court.

WEB COPY

9. With the above observation, this Civil Revision Petition stands disposed of. No costs.

08.09.2023

Index : Yes / No
Internet : Yes/ No
trp

To

The Principal District Munsif Court, Tenkasi.



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CRP(MD).No.2245 of 2023

K. GOVINDARAJAN THILAKAVADI, J.,

trp

C.R.P(MD)No.2245 of 2023

08.09.2023