



CRP(NPD)(MD)No.1443 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.03.2023

CORAM:

THE HONOURABLE **MRS.JUSTICE L.VICTORIA GOWRI**

CRP(NPD)(MD)No.1443 of 2014 &
MP(MD)No.1 of 2014

1.Nagarathinam
2.S.Thangavel

... Petitioners

Vs

1.M.Palanichamy
2.Maniraj
3.Anandaraj

4.The District Collector,
Collectors Office,
Thanthonimalai
Karur

5.The Tahsildar,
Taluk Office,
Karur.

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order dated 20.12.2013 in IA.No.11/2013 in ASSR.No.604/11.1.2013 on the file of the Principal Subordinate Court, Karur and set aside the same.



CRP(NPD)(MD)No.1443 of 2014

For Petitioners : Mr.D.Rajakumar
Respondents : Mr.D.S.Nedunchezian,
Government Advocate for R4 & R5
No appearance for R1 to R3

ORDER

This Civil Revision Petition is preferred by the petitioners / respondents 1 & 2 / respondents 1 & 2 to set aside the order dated 20.12.2013 in I.A.No.11 of 2013 in ASSR.No.604/11.1.2013 on the file of the Principal Subordinate Court, Karur. For better clarity, the petitioners in I.A.No.11 of 2013 are the Appellants in A.S.S.R. No.604/2013 and the respondents in this Civil Revision Petition. The first and second respondents in I.A.No.11 of 2013 are the first and second respondents in A.S.S.R. No. 604/2013 and first and second petitioners in this Civil Revision Petition. For the sake of convenience, the parties hereinafter are referred as arrayed in I.A.No.11 of 2013.

2. I.A.No.11 of 2013 was filed by one M.Palanisamy, one deceased M.Nagarajan and his legal heirs, namely, Maniraj and Anandaraj, seeking to condone the delay of 1053 days in filing an appeal and the same was allowed



CRP(NPD)(MD)No.1443 of 2014

by the learned Principal Subordinate Judge, Karur, by imposing cost of Rs.2,500/- (Rupees Two Thousand Five Hundred only). Challenging the same, the first and second respondents have preferred this Civil Revision Petition on the grounds that (i) the petitioners in I.A.No.11 of 2013 did not approach the Court with clean hands and that (ii) the reasons stated for the delay in preferring the appeal were not proved before the Appellate Court with conducive evidence.

3. The learned counsel appearing for the revision petitioners submitted vehemently that the petitioners in the I.A. did not approach the Court with clean hands. Though Palanichamy / first petitioner was examined as P.W.1, no document was marked to substantiate the delay. Further, the I.A. was filed after the death of Nagarajan, who is the second defendant in the suit. However, without filing a petition to substitute the deceased Nagarajan or getting leave of the Appellate Court, the sons of the deceased Nagarajan were directly included as second and third petitioners / second and third Appellants in the I.A. and Appeal respectively. In addition to that, the appeal was bad for non-joinder of necessary parties, since the wife of Nagarajan was



CRP(NPD)(MD)No.1443 of 2014

not impleaded in the petition at all. In view of the above facts, the learned counsel for the petitioners herein prays to allow this petition by setting aside the order in the I.A.

4. Heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondents 4 and 5 carefully and perused the materials available on record. Since there is no representation for the respondents 1 to 3 herein, even though their names are printed in the cause list, the affidavit filed by them in I.A.No.11 of 2013 before the learned trial Court was taken into consideration.

5. This is a case where a Civil Revision Petition is preferred challenging the order passed by the learned Principal Subordinate Judge, Karur, wherein, the learned Judge was pleased to allow the condone delay petition in filing the appeal against the judgment and decree passed by the learned Additional District Munsif Court, Karur in O.S.No.462 of 2008 on payment of cost of Rs.2,500/- (Rupees Two Thousand Five Hundred only). According to the affidavit filed by the petitioners 1 to 4 in I.A.No.11 of



CRP(NPD)(MD)No.1443 of 2014

2013, since their Counsel Mr.P.Ponnan, Advocate passed away, the bundles were traced in his office belatedly. Only thereafter, they came to know that O.S.No.462 of 2008 was decreed on 22.01.2010 and the copy of the Decree and Judgment was received by them only on 03.01.2013. Further, it is stated in the affidavit that they had filed a suit in O.S.No.85 of 2002 on the file of the District Munsif, Karur and the same was decreed as prayed for in the plaint as against the respondents 1 and 2. It is further stated in the affidavit that the respondents 1 and 2 (petitioners 1 and 2 herein) were parties to the above suit and they have suppressed the decree in O.S.No.85 of 2002 in O.S.No.462 of 2008.

6. However, except the first petitioner among petitioners 1 to 4, others did not adduce any evidence to prove their contentions in the affidavit. Though first petitioner, M.Palanisamy was examined as P.W.1, no document was marked on their side with respect to the death of Mr.Ponnan, Advocate and his brother Nagarajan (second defendant). The Decree and Judgment in O.S.No.85 of 2002 was also not produced before the Court by them. Another significant point to be noted is that Vijaya, wife of Nagarajan / the second



CRP(NPD)(MD)No.1443 of 2014

defendant was not brought on record as a party in the appeal. Even otherwise, it is pertinent that the petitioner's Counsel was duty bound to have brought to the knowledge of the trial Court as to the factum of death of the second defendant, facilitating the respondents to implead the legal heirs of the second petitioner / second defendant, if the date of death of Nagarajan was prior to the disposal of O.S.No.462 of 2008. But the case of the petitioners 1 to 4 was that the second petitioner died after the disposal of O.S.No.462 of 2008.

7. In that case, along with the petition to condone the delay in filing the Appeal, the petitioners 3 and 4 ought to have filed a petition under Order XXII, Rule 3(1) r/w Order XXII, Rule 11 of the Code of Civil Procedure, 1908, seeking to substitute them as additional petitioners 3 and 4 / Appellants 3 and 4 recording the death of their father Nagarajan along with grant leave petition. Without the leave of the Appellate Court, neither the appeal filed by the surviving legal heirs of the deceased Nagarajan nor the petition to condone the delay can be numbered. That apart, no convincing explanation was also given by the witness M.Palanichamy P.W.1 (brother of



CRP(NPD)(MD)No.1443 of 2014

the deceased Nagarajan) in this regard for not producing the death certificate of the deceased. Without producing the death certificate of Nagarajan, the petitioners 1 to 4, advanced an argument before the Appellate Court that, since Nagarajan / the second defendant died after the decree of the Original Suit, there was no necessity at all to seek permission of the Court to implead his legal heirs in the condone delay petition / appeal and such an argument is not sustainable. Hence, this Court is not hesitant to draw adverse inference as to the date of death of Nagarajan as against the said petitioners in I.A.No.11 of 2013. The Counsel who appeared before the Sub-Court, Karur on behalf of the deceased person argued the matter without disclosing the date of death of Nagarajan. It is clear that the intention was to overlook the aspect as to when the second defendant died, whether before or after the disposal of the original suit. The Hon'ble Supreme Court has held in ***P.Jesaya (dead) by LRs. Vs. The Sub-Collector and Another reported in (2004) 13 SCC 431*** as follows:

“4. Though the arguments are attractive one must also keep in mind Order 22, Rule 10 of the Code of Civil Procedure. It is obligatory on the pleader of a deceased to inform the Court and



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the other side about the factum of death of a party. In this case we find that no intimation was given to the Court or to the other side that the first respondent had died. On the contrary a Counsel appeared on behalf of the deceased person and argued the matter. It is clear that the attempt was to see whether a favourable order could be obtained.....”

8. It is quite true that it was the petitioner's case that, the second defendant Nagarajan died after the disposal of O.S.No.462 of 2008, but this Court cannot accept that version. The evidence of P.W.1 is something which this Court is not able to ignore. Hence, P.W.1 in I.A.No.11 of 2013 must face the consequences of the evidence adduced by him. If P.W.1 intends to establish that the second defendant died after the suit in O.S.No.462 of 2008 was decreed, then it is certain that the date of death must be proved by evidence as the same is in issue. Though the death of a person can be presumed, there cannot be any presumption as to the date or to the time of death unless proved beyond reasonable doubt. If an issue arises as to the date of death, the same shall have to be determined on evidence direct or circumstantial and not by assumption or presumption.



CRP(NPD)(MD)No.1443 of 2014

WEB COPY

9. In this revision petition which is preferred against the I.A.No.11 of 2013 which was allowed condoning the delay of 1053 days in preferring an appeal, the evasiveness of the petitioners before the learned Sub-Court, Karur from not mentioning the date of death of the second defendant does not rule out the possibility of his date of death to be prior to the disposal of O.S.No.462 of 2008. In such scenario, the petitioners 3 and 4 have no *locus standi* at all to file I.A.No.11 of 2013, when the suit against their father, that is, the deceased second defendant would abate automatically exclusively due to the negligence of petitioner's Counsel to follow the mandate of Order XXII, Rule 10-A of the Code of Civil Procedure, 1908. On such grounds the benefit of doubt will favour the case of the Revision Petitioners. In that case, the petitioners 3 and 4 shall not be permitted to prefer an Appeal against the judgment and decree passed by the learned Additional District Munsif, Karur in O.S.No.462 of 2008 as per the provisions of Order XXII, Rule 3(2) of the Code of Civil Procedure, 1908. Here in this case, it is quite ridiculous that the petitioners 3 and 4 have even overlooked all the procedures mandated under Order XXII, Rules 3, 10-A and 11 of the Code of Civil Procedure,



1908 and have proceeded confidently to add their names as the third and fourth petitioners in I.A.No.11 of 2013 and third and fourth Appellants in ASSR No.604/2013 respectively without the leave of the Court concerned. In the decision in ***C.Manoharan Vs. C.V.Subramaniam and Ors. reported in 2006 (4) MLJ 898***, this Court has held thus,

“17. The Apex Court, considering the amended provisions of the Code of Civil Procedure, under Order 22, Rule 10-A CPC, as well as the duty of the Pleader, came to the conclusion, that the decree passed cannot be treated as nullity, even referring the decision relied on by the Counsel for the appellant in Ambabai case. Therefore, as per the ratio laid down by the Apex Court in P.Jesaya case, it is to be held, that the decree passed in A.S.No.59 of 1993 is binding upon the L.Rs. of the first plaintiff also and the decree cannot be treated as a nullity.....”

10. In the decision in ***N.Kamatchi Mudaliar (died) and Another Vs. A.Pankajam in review application No.10 of 2020*** dated 11.04.2022, this Court has held that,

“12. Order XXII, Rule 10 (A) of the Code of Civil Procedure stipulates that the advocate who filed



CRP(NPD)(MD)No.1443 of 2014

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vakalat on behalf of the defendant deemed to be holding the vakalat even after the death of the defendant for the purpose of informing the Court about the death of the party.....”

11. That apart the second respondent one S.Thangavel was examined as R.W.1 in I.A.No.11 of 2013, through whom the judgment and decree in O.S.No.85 of 2002 on the file of the District Munsif Court, Karur was marked as Exhibit R1. The learned trial Court has observed that it is seen from the judgment and decree in O.S.No.85 of 2002 dated 20.01.2004 that the first petitioner and the deceased second petitioner had filed the said suit against the respondents 1 and 2 for the relief of permanent injunction which was finally dismissed for default on 20.01.2004. This observation is significant because it is fully contradictory to the affidavit filed by the petitioners in I.A.No.11 of 2013, wherein they had stated that the same was decreed as prayed for. To be precise, the evasiveness of the petitioners in not disclosing the date of death of Nagarajan and their false submissions with respect to O.S.No.85 of 2002 in their affidavit in the said I.A., has proved fatal to the case of the petitioners.



CRP(NPD)(MD)No.1443 of 2014

WEB COPY

12. Thus the reasons stated for the prolonged delay of 1053 days are not satisfactory. The above facts clearly prove that the petitioners in I.A.No. 11 of 2013 did not approach the Court with clean hands to condone the delay of 1053 days in filing the Appeal against the judgment and decree in O.S.No. 462 of 2008 on the file of the Additional District Munsif Court, Karur.

13. In the result, the order in I.A.No.11 of 2013 in ASSR.No. 604/11.1.13, dated 20.12.2013 on the file of the learned Principal Subordinate Judge's Court, Karur is hereby set aside. This Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

03.03.2023

NCC: Yes
Index: Yes
Speaking / Non-Speaking order
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CRP(NPD)(MD)No.1443 of 2014

L.VICTORIA GOWRI, J.

mbi / BTR

To

- 1.The Principal Subordinate Court,
Karur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

CRP(NPD)(MD)No.1443 of 2014 &
MP(MD)No.1 of 2014

03.03.2023