



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.3038 of 2023

and

C.M.P.No.28751 of 2023

A.Sivasubramaniam

..

Appellant

...Vs..

1.N.Sreedhar

2. The Deputy Collector for Stamps
Collectorate, Salem-1.

3. The Sub Registrar
Sub-Registrar Office, Valapadi,
Valapadi Taluk, Salem District.

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Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Order 41 Rule 1 C of Code of Civil Procedure, against the fair and decretal order dated 31.03.2022 passed in I.A.No.1 of 2022 in O.S.No.251 of 2018 on the file of Additional District Judge, Salem.



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For Appellant : Mr.M.S.Krishnan
for M/s.Sarvabhauman Associates

For Respondents : Mr.N.Uma Pathi (R1)
Mr.B.Tamil Nidhi (R2 and R3)
Additional Government Pleader

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order dated 31.03.2022 passed in I.A.No.1 of 2022 in O.S.No.251 of 2018 on the file of Additional District Judge, Salem.

2., The appellant herein filed a suit in in O.S.No.483 of 2012, on the file of District Munsif, Salem seeking for declaration and permanent injunction. Subsequently, the suit was transferred to the file of III Additional District Judge, Salem on account of pecuniary jurisdiction and renumbered as O.S.No.251 of 2018 and the same was dismissed for default on 02.11.2018 and thereafter the suit was restored vide order dated 09.08.2019 in I.A.No.97/2019. Again on 10.11.2021, the said suit was dismissed for default. Thereafter, the appellant has filed an application in I.A.No.1 of 2022, seeking to restore the suit and the said application was dismissed vider order dated



31.03.2022. Challenging the said order, the present Civil Miscellaneous Appeal has been filed by the Appellant.

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3. The learned counsel for the Appellant submitted that due to unavoidable circumstances, the suit came to be dismissed for default twice and it is neither willful nor wanton and despite bona fide reasons assigned, the Court below has dismissed the application filed for restoration of the suit.

4. The learned counsel for the respondents submitted that the suit was already dismissed for default twice and therefore the Court below has rightly dismissed the application filed by the Appellant for restoration of the suit.

5. Heard both sides. Perused the records.

6. A perusal of the order passed by the Court below would go to show that the Court below has set R1 to R3 *ex parte* since they were absent and not filed any counter. Normally, when there is no appearance on behalf of the petitioner, the Court can simply dismiss the application for non prosecution. But, in the present case, the Court below has passed the order on merits in the



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absence of both the petitioner as well as the respondents, which in the opinion of this Court is not correct. That apart, the submission made by the learned counsel for the respondents herein cannot be accepted for the reason that the Respondents ought to have appeared before the Court below and filed the counter affidavit in time and contested the application, but they respondents had remained *ex parte*. Therefore, now they are not entitled to raise any grounds to protest the present appeal.

7. In these circumstances, this Court is of the view that the course adopted by the Court below in dismissing the I.A. is not correct and further, the suit is filed for declaration and permanent injunction and if no opportunity is given to the appellant/plaintiff, his rights will get affected and cause great prejudice to him. Hence, this Court is inclined to allow this Civil Miscellaneous Appeal.

8. Accordingly, this Civil Miscellaneous Appeal is allowed. The order passed in I.A.No.1 of 2022 in O.S.No.251 of 2018, on the file of III Additional District Judge, Salem is set aside and the suit in O.S.No.251 of 2018 is restored to file. Since the suit is pending from the year 2012, the



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learned III Additional District Judge, Salem is directed to dispose of the same within a period of six months from the date of restoration of the suit. No costs. Consequently, connected Miscellaneous Petition is closed.

14.02.2024

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Index : Yes / No

Internet : Yes / No

To

1. The Deputy Collector for Stamps
Collectorate, Salem-1.
2. The Sub Registrar
Sub-Registrar Office, Valapadi,
Valapadi Taluk, Salem District.
3. The Additional District Judge, Salem
4. The Section Officer,
VR Section,
High Court,
Madras.



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KRISHNAN RAMASAMY, J.
arr

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