



C.R.P.No.981 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.981 of 2022
and C.M.P.No.5091 of 2022

Deenadayalu

... Petitioner

-Vs-

1.Ravichandran
2.Mayilvaganam

3.The Sub Registrar
Pallipet, Pallipet Taluk
Tiruvallur District.

4.Bharathi
5.S.Amudha

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decretal order dated 06.11.2019 in I.A.No.106 of 2017 in I.A.No.853 of 2011 in O.S.No.249 of 2008 passed by the learned 1st Additional District Judge, Tiruvallur.

For Petitioner : Mr.J.Shanmuga Sundara Babu

For Respondents : Dr.S.Surya
Additional Government Pleader - for R3
R1 and R5 - Not ready in Notice
R2 and R4 - Refused

ORDER

The respondents in I.A.No.106 of 2017 have remained exparte in the



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proceedings and therefore notice is dispensed with for them in this revision.

2. The second respondent and fourth respondent have been served in the revision, but they have not entered appearance. Insofar as the third respondent is concerned, Dr.S.Surya takes notice.

3. O.S.No.249 of 2008 is a suit for specific performance of an agreement of sale dated 15.04.2008. The said suit was presented on 28.08.2008. Thereafter, a written statement was received and the suit was posted for trial. The suit was listed on 07.07.2010. For want of appearance of the plaintiff, the suit was dismissed for default. Thereafter, an application was filed to restore the suit in I.A.No.853 of 2011. Pending this application, the plaintiff came to know that the first defendant had passed away and therefore, an application was filed in I.A.No.264 of 2012 to implead the legal representatives of the first defendant. The said application was allowed on 26.09.2012. After the cause title was amended and parties were brought on record, an application to restore the suit ie., I.A.No.853 of 2011 was taken on file. This application was dismissed for default again on 21.04.2016. In order to restore I.A.No.853 of 2011 ie., the petition filed to restore the suit which has been dismissed for default, an application was filed in I.A.No.106 of 2011. That application also came to be dismissed by the impugned order, against which the present revision.

4. The learned I Additional District Judge, Tiruvallur dismissed the application



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on the ground that at the time of filing I.A.No.853 of 2011 as well as I.A.No.106 of 2017, the plaintiff had cited the same reason viz., he was suffering from Jaundice.

It is pertinent to point out here that, though the respondents had received the notice in the application, they had remained exparte. The Court below should have seen only the reason that had been given by the plaintiff on its face value. There is no presumption that a person cannot get Jaundice twice in his life. In other words, the fact that he had got Jaundice previously does not mean that he could not have fallen sick with Jaundice again. A plaintiff cannot gain by dragging on the suit. From the narration of the aforesaid facts it is seen that the plaintiff has been repeatedly knocking the doors of the Court for the purpose of agitating his rights in the suit. It is unfortunate that the defendants 1, 4, 5 and 7 had died pending the suit, which constrained him to take out one application after another.

5. For the purpose of restoration of a suit or application, the relevant provision is Order IX Rule 9 of C.P.C. Under Order IX Rule 9, in order to get a suit or application restored on to the file, the plaintiff would have to show sufficient cause for his non-appearance. The fact that the plaintiff had pleaded medical illness, according to me, is a sufficient cause.

6. In the light of the above discussion, the order passed by the learned I Additional District Judge, Tiruvallur in I.A.No.106 of 2017 in O.S.No.249 of 2008 dated 06.04.2019 is set aside. I.A.No.106 of 2017 stands restored and the learned



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V. LAKSHMINARAYANAN, J.

KST

I Additional District Judge, Tiruvallur is directed to take up I.A.No.853 of 2011 and pass orders on the same on or before 31.07.2024.

7. With the above direction, the C.R.P is allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.04.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The I Additional District Judge
Tiruvallur.

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