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C.M.A. No.1590 of 2020, C.R.P. No.2667 of 2019 and C.M.P. No.17590 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1590 of 2020, C.R.P. No.2667 of 2019
and C.M.P. No.17590 of 2019

1.Kandasamy
2.Murugesan
3.Nallammal
4.Palanisamy .. Appellants in C.M.A. and petitioners in C.R.P.

vs.

1.Jaya
2.Selvakumar
3.Poongodi
4.Chithra .. Respondents 1 to 4 in C.M.A. and C.R.P.
5.Rajila
6.Ranjith
7.Meghala .. Respondents 5 to 7 in C.R.P.

Prayer in C.M.A.: Civil Miscellaneous Appeal filed under Order XLII Rule 1(c) of the Code of Civil Procedure, 1908 against the order dated 19.02.2020 passed in I.A. No.501 of 2019 in O.S. No.259 of 2016 on the file of the III Additional District Court, Salem.



C.M.A. No.1590 of 2020, C.R.P. No.2667 of 2019 and C.M.P. No.17590 of 2019

Prayer in C.R.P.: Civil Revision Petition filed under Article 227 of the Constitution of India against the order in I.A. No.1 of 2019 in O.S. No.259 of 2016 on the file of the III Additional District Court, Salem dated 18.02.2019.

For Appellants in C.M.A. and
petitioners in C.R.P. : Mr.S.Kamalesh Kannan

For Respondents 1 to 4 in
C.M.A. and C.R.P. : Mrs.R.Meenal

For respondents 5 to 7 in C.R.P.: No appearance

COMMON ORDER

Learned counsel for the petitioners in C.R.P. No.2667 of 2019 submits, on instructions that he is not pressing the Civil Revision Petition. He has also made an endorsement to that effect in the Court bundle. Accordingly, the Civil Revision Petition is dismissed as not pressed.

The Civil Miscellaneous Appeal has been filed by the appellants/ plaintiffs in the suit, aggrieved by the order passed in I.A. No.501 of 2019 in O.S. No.259 of 2016, dismissing the said application, which has been filed to restore the suit O.S. No.259 of 2016, which was dismissed for default.

2.The suit has been filed for declaration and partition. During the pendency of the suit, an impleading application was filed by the



C.M.A. No.1590 of 2020, C.R.P. No.2667 of 2019 and C.M.P. No.17590 of 2019

petitioners/appellants/plaintiffs seeking to implead certain parties, who according to the petitioners/appellants/plaintiffs are necessary parties for the effective adjudication of the suit. The Trial Court had dismissed the Interlocutory Application in I.A. No.501 of 2019 in O.S. No.259 of 2016 filed by the petitioners/appellants/plaintiffs. Aggrieved by the same, C.R.P. No.2667 of 2019 came to be filed before this Court, which has now been not pressed by the petitioners/appellants/plaintiffs.

3.During to the pendency of the Civil Revision Petition, the petitioners/appellants/plaintiffs had sought time before the Trial Court to proceed with the trial. However, since the matter was listed in the special list, the Trial Court had dismissed the suit for non-prosecution. In order to restore the suit which was dismissed for non-prosecution, I.A. No.501 of 2019 in O.S. No.259 of 2016 was filed by the petitioners/appellants/plaintiffs.

4.As seen from the impugned order, the said application came to be dismissed on the ground that the petitioners/appellants/plaintiffs have been dragging on the case and are not ready for trial.

5.Learned counsel for the respondents vehemently opposes the allowing of C.M.A., filed by the petitioners/appellants/plaintiffs on the ground that the petitioners/appellants/plaintiffs had allowed the suit to be



C.M.A. No.1590 of 2020, C.R.P. No.2667 of 2019 and C.M.P. No.17590 of 2019

dismissed for non-prosecution only to drag on the proceedings. She would also submit that the petitioners/appellants/plaintiffs do not have any merit in the suit O.S. No.259 of 2016.

6.It is seen that immediately after the dismissal of the suit for non-prosecution, the petitioners/appellants/plaintiffs have filed I.A. No.501 of 2019 seeking to restore the suit, which was dismissed for non-prosecution. There was no delay on the part of the petitioners/appellants/plaintiffs to file the restoration application.

7.This Court, after giving due consideration to the fact that the restoration application was filed immediately after the suit was dismissed for non-prosecution and the suit was filed for declaration and partition, is of the considered view that the Trial Court ought to have taken note of the said fact and ought to have allowed I.A. No.501 of 2019 as sufficient cause has been shown by the petitioners/appellants/plaintiffs for filing the restoration application.

8.For the foregoing reasons, the arguments of the learned counsel for the respondents, who has vehemently opposed the allowing of the Civil Miscellaneous Appeal, is rejected by this Court.



C.M.A. No.1590 of 2020, C.R.P. No.2667 of 2019 and C.M.P. No.17590 of 2019

9. Accordingly, the impugned order dated 19.02.2020 passed in

I.A. No.501 of 2019 in O.S. No.259 of 2016 on the file of the III Additional District Court, Salem is hereby set aside and the Civil Miscellaneous Appeal is allowed.

10. In the interest of both the parties, a direction needs to be given to the Trial Court to dispose of the suit within a time frame to be fixed by this Court. Accordingly, this Court directs the Trial Court to dispose of the suit within a period of four months from the date of receipt of a copy of this common order. No costs. Consequently, connected petition is closed.

02.07.2024

vga

To

1. The III Additional District Court, Salem.
2. The Section Officer,
V.R. Section, High Court, Madras.



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C.M.A. No.1590 of 2020, C.R.P. No.2667 of 2019 and C.M.P. No.17590 of 2019

ABDUL QUDDHOSE, J.

vga

**C.M.A. No.1590 of 2020, C.R.P. No.2667
of 2019 and C.M.P. No.17590 of 2019**

02.07.2024