



C.R.P.(NPD)(MD) No.771 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 11.03.2024

ORDERS PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(NPD)(MD) No.771 of 2020

M.P.A.Basheer Ahamed

... Petitioner/Petitioner/
Appellant

Vs.

1.G.Peria Esakki

2.G.Palani

3.G.Chinna Esakki

4.Maimoon Begum

5.M.Esakkimuthu (Died)

... Respondents 1 to 5/
Respondents/Respondents

6.Sivakumar

... 6th Respondent

***[R6 – brought on record as LR of the deceased
5th respondent vide order dated 26.03.2024 in
C.M.P.(MD) Nos.10620 and 10621 of 2022 in
C.R.P.(NPD)(MD) No.771 of 2020]***



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Prayer: Petition filed under Section 115 of the Civil Procedure Code against the order dated 14.02.2020 in I.A.No.29 of 2018 in Unregistered Appeal Suit on the file of the Court of the Principal Subordinate Judge, Tirunelveli.

For Petitioner	:	Mr.H.Arumugam
For RR1 to 3	:	Mr.K.Esakki
For R6	:	No appearance
Respondent-5	:	Died

ORDER

This civil revision petition is directed against an order dated 14.02.2020 passed in I.A.No.29 of 2018 in an unregistered Appeal Suit by the learned Principal Subordinate Judge, Tirunelveli.

2. The said application was filed by the petitioner herein seeking condonation of delay of 1082 days in re-presenting the first appeal.



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3.1. For disposal of this civil revision petition, it is necessary to refer to certain facts, which are as under:

3.2. Respondents No.1 to 3 herein filed O.S.No.247 of 2010 on the file of the Court of the learned Principal District Munsif, Tirunelveli to declare that the plaintiffs are liable to pay only Rs.40,000/- as on the date of filing of the suit to the 1st defendant towards the mortgage deed dated 03.07.1998 and for redemption of plaint schedule property and consequentially also sought for a direction to deliver vacant possession of the schedule property to the plaintiffs. The said suit was dismissed by the trial Court by a judgment and decree dated 24.11.2014. The plaintiffs have not chosen to file any appeal against the said decree and the said decree has become final. However, the petitioner herein, who is the 2nd defendant in the said suit filed first appeal aggrieved by certain observations made in the judgment in O.S.No.247 of 2010. The said appeal was returned on the ground of deficit Court fee. But the petitioner herein failed to re-submit the said returned appeal within the time stipulated by the Court and as such, filed the present application in I.A.No.29 of 2018 seeking condonation of



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the delay in re-presenting the said appeal, however, without seeking extension of time for payment of Court fees and without paying the deficit Court fees.

4. The learned lower appellate Court taking note of the fact that no application is filed seeking extension of time for payment of Court fees and also the fact that deficit Court fee is not paid, refused to entertain the said interlocutory application in I.A.No.29 of 2018 and dismissed the same by passing the order under revision. Aggrieved by the said order, the petitioner/2nd defendant approached this Court.

5. It is the contention of the learned counsel for the petitioner that the petitioner is not aggrieved by the decree passed in the suit, but he is only aggrieved by certain observations made on the defence set up by the petitioner herein on the ground of adverse possession.

6. In support of his contention, learned counsel for the petitioner placed reliance on the decisions of this Court and the Hon'ble Apex Court in



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the case of ***R.Maria Siluvai vs. B.Sreekumari Amma and three others*** reported in ***1998 (II) CTC 218***; and ***Mohd. Nooman and others vs. Mohd. Javed Alam and others*** reported in ***(2010) 9 SCC 560***.

7. Under Section 96 read with Order XLI of the Civil Procedure Code, the right of first appeal is only provided against the decree passed in the original suit. In the instant case, the petitioner is not aggrieved by the decree passed in the original suit, but he is aggrieved only on certain observations made in the judgment of the trial Court in the original suit. There is no remedy of appeal provided against the observations made in the judgment and it is only against a decree passed in an original suit, an appeal under Section 96 can be entertained by the learned lower appellate Court. Thus, the very appeal presented by the petitioner is not maintainable. It is only in case an appeal is preferred against the decree by the losing party and in case, the another party is aggrieved by any observations made in the judgment appealed against, such party will have a right to file cross objection in terms of Rule 22 of Order XLI of the Civil Procedure Code. In



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the absence of any appeal filed under Order XVI Rule 1 read with Section 96 of the Civil Procedure Code, the question of entertaining any appeal against mere observations or findings recorded in a judgment does not arise.

8. The reliance placed by the learned counsel for the petitioner on the decisions of this Court and the Hon'ble Apex Court in the case of ***R.Maria Siluvai vs. B.Sreekumari Amma and three others (supra)*** and ***Mohd. Nooman and others vs. Mohd. Jabed Alam and others (supra)*** have been thoroughly considered by this Court and those decisions have no application to the case on hand, as both the cases relied upon are the matters dealing with a case of remand and the observations made in the order of remand and its binding in nature on the lower Court.

9. Appeal is a creature of statute and such remedy is available to the parties only within the parameters provided under the statute. In the case on hand, admittedly, the remedy of appeal is provided only against the original decrees and not against observations.



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10. In view of the conclusion arrived at by this Court on the maintainability of the very appeal filed by the petitioner before the learned lower appellate Court, this Court is not inclined to interfere with the order under revision.

11. Accordingly, this Civil Revision Petition is dismissed. No costs.

26.03.2024

(2/2)

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR

To

The Principal Subordinate Judge,
Tirunelveli.



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MUMMINENI SUDHEER KUMAR, J.

abr

Pre-delivery Order made in
C.R.P.(NPD)(MD) No.771 of 2020

26.03.2024
(2/2)