

E.Krishnammal Vs. M.Jayanthi

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Court : Chennai

Decided On : Jan-03-2014

Judge : P.R.Shivakumar

Appellant : E.Krishnammal

Respondent : M.Jayanthi

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

03. 01.2014 CORAM THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR
C.R.P (NPD) No.4787 of 2013 1. Smt.E.Krishnammal (late) 2. E.Pakkrisamy
...Petitioners vs. 1.M.Jayanthi 2.The State Rep. by The Sub-Registrar SRO, Anna
Nagar Chennai 3.The State rep. by its Collector Chennai District ...Respondents
Civil Revision Petition is filed under Section 115 of the Civil Procedure Code
against the order passed in I.A.No.21504 of 2010 in O.S.No.6437 of 2008 dated
29.06.2011 on the file of the 1st Asst. City Civil Court, Chennai. For Petitioner :
Mr.A.T.Jayarman

ORDER

This Civil Revision Petition is sought to be filed against the order of the learned 1st
Assistant Judge, City Civil Court, Chennai dated 29.06.2011 made in I.A.No.21504
of 2010.

2. The arguments advanced by Mr.A.T.Jayaraman, learned counsel for the petitioners are heard. The grounds of revision and the materials produced in the form of typed-set of papers are also perused.

3. This Civil Revision Petition is purported to have been filed in the names of Smt.E.Krishnammal and E.Pakkrisamy against 1) M.Jayanthi, 2) The State Represented by Sub-Registrar, SRO, Anna Nagar, Chennai and 3) The State Represented by its Collector, Chennai.

4. The very array of parties will show how casually the litigation came to be instituted. One and the same person, namely the State is stated to be represented by the Sub-Registrar as well as the District Collector and it is projected as two different persons assigning two different ranks, namely Respondent No.2 and Respondent No.3. Apart from that, an explanatory note to the name of the first petitioner Krishnammal, has been noted in bracket in the cause title, which reads ".Late".. When M.P.No.1 of 2013 filed under Order IV Rule 9(4) of the Appellate Side Rules to condone the delay of more than 677 days in representing the Civil Revision Petition was heard, it was represented that krishnammal was very much alive and only her husband Ettiappan was no more and that by mistake, instead of prefixing the term ".late". to Ettiappan, it was suffixed to Krishnammal. Based on that representation alone the said miscellaneous petition came to be allowed.

5. Now it transpires that the said order came to be obtained by a misrepresentation. In the opening sentence of the memorandum of Civil Revision Petition itself it is stated as follows: ".The 1st Revision Petitioner is died on 28.1.2011". (The said sentence has been extracted without correcting the mistakes found in the grounds of revision) When a question was put to the learned counsel for the revision petitioners as to how a petition could have been filed in the name of a dead person, no explanation is forthcoming. It transpires that even after the death of Krishnammal, the application filed before the trial Court as I.A.No.21504 of 2010 in O.S.NO.6437 of 2008 was pursued without informing the said Court of the death of Krishnammal and without taking steps either to get the remaining petitioner recorded as the legal representative of deceased Krishnammal or to implead the legal representatives of the deceased

Krishnammal. The matter was pursued to a logical end which resulted in the dismissal of the said application on merit. Only now, in the grounds of revision, the suffix (late) has been made to the name of Krishnammal, after showing her as the first petitioner in the revision petition. The same is also improper because no proceedings can be initiated either in the name of or against a deceased person.

6. On merits also, there is no satisfactory explanation offered by the applicants before the trial Court in I.A.No.21504 of 2010. The suit was dismissed for default on 29.09.2010. The copy of the affidavit filed in support of the application (unnumbered) filed under Order IX Rule 9 CPC and the application I.A.No.21504 of 2010 filed under Section 5 of the Limitation Act is dated 23.10.2010. The copy of the application, which has been certified to be true copy by the learned counsel for the petitioner, also bears the date 23.10.2010. If at all the application was filed on 23.03.2010, there would have been no delay and the necessity to file a application under Section 5 of the Limitation Act would not have arisen.

7. In addition, in the unnumbered paragraph 3 of the common affidavit filed by the applicants, the following statement came to be made: ".Since my counsel was engaged in some other Court, he could not appear on 15.10.2010 before this Hon'ble Court at the time of calling and consequently the above said case was dismissed for default". The said averment is capable of giving an impression that the suit was not dismissed before 15.10.2010 and it came to be dismissed only on 15.10.2010. However, in the unnumbered paragraph 5 of the common affidavit, the prayer has been made in the following language: ".our non-appearance on the day is neither willful nor wanton, and now we file this affidavit to restore the suit which was dismissed for default on 29.09.2010 and to condone the delay of 25 days in filing the restore the suit".. (once again it is pointed out that the mistakes found in the affidavit are not corrected by this Court while extracting the relevant part of the averment) Again in paragraph 7 of the affidavit, the following prayers have been made: ".I therefore pray that this Hon'ble Court may be pleased to 1) condone the delay of 25 days in filing the petition to restore the suit and 2) restore the suit which was dismissed for default on 15.10.2010.". The above said excerpts from the affidavit will show utter confusion with which the affidavit averments came to be made.

8. The above said confusions caused by the averments made in the affidavit shall be enough to justify the dismissal of the application. Even then, the learned trial Judge has chosen to ignore those contradictory averments made in the affidavit besides the absence of any valid reason for the delayed approach made to the Court with an application under Order IX Rule 9 CPC and make an observation that the plaintiffs deliberately allowed the suit to be dismissed for default and caused deliberate delay in approaching the Court with an application under Order IX Rule 9 CPC. In support of the conclusion, the learned trial Judge has pointed out the fact that the suit was filed for a declaration not of the title of the plaintiffs to the suit property but of the alleged invalidity of the document said to have been executed by the plaintiffs in favour of the first defendant. Even while seeking a declaration that the said sale deed is null and void, the plaintiffs had not chosen to adopt the valuation found in the document, which was sought to be declared null and void. Under the said circumstances, the Court fee examiner of the High Court during inspection found that the relief had been improperly valued and consequently, a check slip came to be issued. Since the plaintiffs contended that they were entitled to adopt the valuation stated in the plaint, the trial Court chose to appoint a Commissioner to visit the property and submit a report regarding the value of the same. When the plaintiffs were asked to pay the remuneration to the Commissioner and bear the expenses of the Commissioner, the plaintiffs did not comply with the direction and they chose to keep away from the Court on the hearing dates which led to the dismissal of the suit for default.

9. After the suit was dismissed for default on 29.09.2010, the petition (unnumbered) under Order IX Rule 9 CPC came to be filed along with an application under Section 5 of the Limitation Act which was numbered as I.A.No.21504 of 2010 since there was delay of 25 days in filing the Order IX Rule 9 application. In the common affidavit filed in support of those applications, all those complications have been made by the deponent. The same itself shall be enough to hold that the trial Court did not commit any error or mistake in dismissing the application. Apart from improperly furnishing the cause title of the Civil Revision Petition, E.Pakkrisamy, who is inappropriately shown as the second petitioner in the Civil Revision Petition, is not in a position to satisfy this Court that the order sought to be impugned in the Civil Revision Petition is in any way defective or

infirm. There is no merit in the Civil Revision Petition and it has got to be dismissed at the threshold. Accordingly, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. 03.01.2014 Index:yes/no Internet:yes/no gpa To 1st Asst. City Civil Court Chennai P.R.SHIVAKUMAR.J., gpa C.R.P (NPD) No.4787 of 2013 03.01.2014

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