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Court : Chennai

Decided On : Dec-20-2016

Judge : M.V. Muralidaran

Appeal No. : CRP(NPD)Nos. 468 & 469 of 2012 & M.P. No. 1 of 2012

Appellant : Swaminathan

Respondent : Savithri and Others

Judgement :

(Common Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the Fair and Final Order dated 10.12.2011 made in I.A.Nos.1932 and 1933 of 2011 in XCA.No.10131 of 2010 in O.S.No.1515 of 2004, on the file of the District Court, Coimbatore and pray to set aside the same.)

Common Order:

1. The second defendant in O.S.No.1515 of 2004 is the Civil Revision Petitioner before this Court. Challenging the order passed in I.A.Nos.1932 and 1933 of 2011 in XCA.No.10131 of 2010 in O.S.No.1515 of 2004 dated 10.12.2011 passed by the learned Principal District Judge, Coimbatore, this Civil Revision Petition has been filed.

2. The case of the petitioner/2nd defendant is that the first respondent Savithri, who is the plaintiff in O.S.No.1515 of 2004 has filed the Civil Suit for partition

against this petitioner/2nd defendant and the other defendants/the respondents 2 and 3 herein.

3. Further case of the petitioner/2nd defendant is that the preliminary decree was passed in favour of the first respondent/plaintiff by the learned II Additional District Munsif Court, Coimbatore by judgment dated 24.10.2007 and subsequently final decree was passed in I.A.No.321 of 2008 on 04.09.2010.

4. The petitioner further states that though the petitioner/2nd defendant has contested the suit and the final decree proceedings, but the same was ended in favour of the first respondent/plaintiff. Therefore, aggrieved against the said final decree as per the advice of the petitioner/2nd defendant's counsel for filing an appeal, the petitioner/2nd defendant has filed Xerox copy application in XCA.No.10131 of 2010 in the copy section of the said Court for seeking issuance of the copy of the fair and final decree order. Though on 02.05.2011, the Court has directed the petitioner/2nd defendant to deposit the stamps for providing certified copies of the fair and final order, but, the stamp papers were not deposited in time as directed by the Court, hence, the copy application filed in XCA.No.10131 of 2010 was struck off on 06.05.2011.

5. The petitioner also come forward by saying that after filing the above copy application in XCA.No.10131 of 2010 the papers and bundle related to the above case were mixed up with some other papers in the Advocate Office. Due to the mingled of the said papers and the bundles in the Advocate Office, the Advocate was not properly informed to the petitioner and hence, the petitioner was unable to follow the same and the stamp papers were not deposited within the time stipulated in the copy section. Therefore, that fact was came to the knowledge of the petitioner only on 30.08.2011.

6. Though the petitioner/2nd defendant was strongly contested the suit, but the division of the property mentioned in the final decree proceedings was disputed by the petitioner/2nd defendant and hence, he wants to challenging the final decree proceedings. But, due to the struck off order of the above X.C.A.No.10131 of 2010, the valuable right of the appeal of the petitioner was deprived.

7. Therefore, in the above circumstances, this petitioner/2nd defendant has filed two applications one in I.A.No.1932 of 2011 for restore the copy application in XCA.No.10131 of 2010, which was struck off by the section on 06.05.2011 and another application in I.A.No.1933 of 2011 to condone the delay of 116 days for filing the restoration application for restore the copy application in XCA.No.10131 of 2010. Therefore, both the applications were filed before the learned District Munsif, Coimbatore. After numbering the above two applications, notice was ordered to the respondents/plaintiffs and other respondents. Hence, he prayed the learned District Munsif, Coimbatore to allow the application and to restore the copy application in XCA.No.10131 of 2010.

8. On receipt of the notice in the above two I.A.s, the first respondent/plaintiff has filed the counter, denying the allegations made out by the 2nd respondent in the affidavit.

9. The first respondent/plaintiff denying the averments made by the petitioner in Para Nos.4 and 5 and stating that after the final decree was passed, the II Additional District Munsif Court, Coimbatore on 04.09.2010, the first respondent/plaintiff has filed an Execution Petition before the learned Principal District Munsif Court, Coimbatore in E.P.No.26 of 2011 and notice was ordered to this petitioner/2nd defendant and he appeared in the said Execution proceedings on 29.07.2011. After receipt of the notice, he appeared before the Court on 29.07.2011, only this petitioner/2nd defendant has filed these two copy applications for restoring the copy application, which was struck off on 06.05.2011. Therefore, the first respondent/plaintiff has stated that there is a willful negligent on the part of the petitioner/2nd respondent in following up the matter and hence he is not entitled for the restoration of the copy application since there is no bonafide on his part.

10. The first respondent/plaintiff has stated that the petitioner/2nd defendant has filed the petition only to evade the delay in filing the appeal against the final decree and he prayed for before the learned District Judge, Coimbatore, if the petition is allowed, prejudiced would be caused to the first respondent/plaintiff. Therefore, the petition filed by the petitioner/2nd respondent has got no merits and it lacks

bonafide. Hence, the first respondent/plaintiff sought for the dismissal of the two applications.

11. Considering both sides arguments, the learned Principal District Judge, Coimbatore was pleased to dismissed both the applications by stating that on receipt of the notice in the Execution proceedings on 29.07.2011 only this petitioner/2nd respondent has filed the copy application for restoration. The learned Judge also states that on receipt of the Execution Petition notice on 29.07.2011 only to restrain the first respondent/plaintiff from taking possession of the share of the first respondent/plaintiff, this application has been filed. Therefore, both the petitions are not maintainable and lacks bonafide and dismissed the application on 10.12.2011. Challenging the said orders, this petitioner/2nd defendant has filed these two Civil Revision Petitions before this Court.

12. Heard Mr.P.Saravana Sowmiyan, learned counsel appearing for the petitioner and Mr.J.Pothiraj, learned counsel appearing for the first respondent.

13. While the above two Civil Revision Petitions coming for admission before this Court, this Court while ordering notice of motion in the above two Civil Revision Petitions and an order of interim stay the operation of all further proceedings in O.S.No.1515 of 2010 on the file of the Principal District Munsif, Coimbatore was ordered and later on the said interim order was extended.

14. It is a case of the petitioner/2nd defendant is that admittedly the suit was decreed in favour of the first defendant/plaintiff and preliminary decree was passed and later on final decree was passed. This petitioner/2nd defendant, who is the only contesting respondent/defendant in the suit have every right to file the appeal against the order of the learned Principal District Munsif, Coimbatore, and against the final decree proceedings.

15. It is not the case of the petitioner/2nd defendant, and not filed any copy application for getting the certified copies of the Judgments in I.A.No.321 of 2008, dated 04.09.2010. But, he has filed the copy application in XCA.No.10131 o 2010 and the Section also directed the petitioner to deposit the stamp papers on 02.05.2011 within a period of 3 days. But, due to non-depositing of the stamp

papers, the copy application was struck off on 06.05.2011.

16. For restoring the said copy application, the petition has been filed by the petitioner/2nd defendant was delayed at 116 days, the petitions filed only for restoration and though the delay of 116 days for filing restoration application. If both the applications are allowed, there was no prejudiced caused to the respondents, particularly the first respondent/plaintiff, since, this petitioner/2nd defendant is entitled for filing appeal as per law, but that should not be denied due to the struck off of the copy applications.

17. It is common law that a person, who lost the case have every right to file an appeal with the certified copy of the Judgment. But, in this case, though if the petitioner/2nd defendant has filed the application, but due to the non-depositing of the stamp papers, the copy application was struck off on 06.05.2011. Only with the bonafide reason since the copy application was struck off the filing of the appeal will be delayed and delay will be caused to the petitioner/2nd defendant since an appeal should be filed within a period of 3 days from the date of receipt of the copy of the order. But, in the case in hand, the Court has directed the petitioner/2nd defendant to deposit the stamp papers on 02.05.2011 within 3 days. But, the same was struck off, due to non-depositing the stamp papers on 06.05.2011. Therefore, this Court and the Hon ble Apex Court has very categorically held in several cases in restoring the copy application only to avoid the delay. Therefore, no prejudiced caused to the other parties. In this case, there was no question for contesting both the applications on merits or if the Court below namely the Principal District Judge, Coimbatore has allowed to restore the copy application, there was no prejudiced caused to the first respondent/plaintiff. But, the order of the learned Judge is totally unacceptable one, since he has given the reason that due to restraining the plaintiff from taking possession of the share of the property is totally unwanted and against the law and natural justice.

18. In my considered opinion that though both the I.A.s were dismissed on 10.02.2011 and this Civil Revision Petitions were filed on 02.02.2012 and this Court while ordering notice of motion in both the Civil Revision Petitions and interim stay was granted on 03.02.2012 and stayed all proceedings in

O.S.No.1515 of 2004 and it is pending more than 5 years unnecessarily. Therefore, this petitioner/2nd defendant is entitled for getting restoration of the copy application filed in XCA.No.10131 of 2010. Accordingly, both the applications ought to be allowed.

19. In the result:

(a) both the Civil Revision Petitions are allowed by setting aside the order in I.A.Nos.1932 and 1933 of 2011 in XCA.No.10131 of 2010 in O.S.No.1515 of 2004, dated 10.12.2011, on the file of the Additional District Munsif, Coimbatore.

(b)the Principal District Munsif Court, Coimbatore is hereby directed to restore the copy application in XCA.No.10131 of 2010 and issue the copy of the certified copy of the judgment and decree sought for in the application within a period of 15 days from the date of receipt of a copy of this order.

20. Accordingly, both the Civil Revision Petitions are allowed. No cost. Consequently, connected miscellaneous petition is closed.

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