

IN THE COURT OF SUBORDINATE JUDGE, OMALUR,
SALEM DISTRICT.

Present : Thiru. Gnana Balakrishnan, B.Sc., B.L.,
Subordinate Judge, Omalur.

Tuesday, the 20th day of June 2023

IA.No.2/2022

in

OA No.4/2021

in

O.S.340/2018

1. Thandayammal (died)
2. Venkatachalam
3. Lakshmi
4. Bakkiyam

.. Petitioners/Petitioners

//VS//

1. ArulRaj
2. Selvam
3. K. Suvendran

.. Respondents/Respondents

This petition is coming up for final hearing before this court in the presence of Learned advocate Thiru. M. Suriyakumar for Petitioners and of Thiru S. Sivaprakasam for the respondents and upon hearing both side arguments and perusing the records and having stood over till this day for consideration and this court delivered the following:

ORDER

The petitioners have filed the above application under order 9 rule 9 CPC to restore the I.A.4/2021 which was dismissed for default on 28.02.2022 in the above suit.

2. **The contents of the affidavit filed by the petitioners is as follows:**

The Petitioners have filed the petition in IA 4/2021 to re-open the main suit which was posted for delivery of judgment. Originally the case was posted for petitioners side further evidence and on that day the further witnessess are not available brought by them for examination of their side witness. In this regard the petitioners were not able to exmine the vital witnessess on their side. Hence their side evidence was closed on 20.12.2021. Further the above said IA 4/2021 was posted for enquiry on 28.02.2022 and the same was dismissed for default for the reason that he was absent on that day. But factually that the above said case was passed over after the lunch sessions; After lunch sessions, the petitoners were not called by this Court upto 5 PM and after arrival of my advocate told that the petition in IA 4/2021 when it was called in open court and due to failure of the non representation in his side the above re-open petition in IA 4/2021 was dismissed. Every hearing date the petitioners have attended the court regularly without fail. But unfortunately while the petitioners waiting outside of the court, they were unable to enter into open court hall immediately when it is called by the court on the hearing date and their absence is neither willful nor wanton and only due to above said bonafide reason. The petitioners have good case and it can be decided only hearing of both sides. Unless the above IA 4/2021 is restored to file, the petitioners will be put into hardships and loss. Hence this petition.

3. The counter filed by the 1st respondent and adopted by 2 & 3 respondents is as follows:-

The petition is not sustainable. There is no merit for this petition and the one alleged is utter imaginary made out for filing this false and vexatious petition. In the above suit, on the plaintiff side, the evidence of 3rd plaintiff and other witnesses were closed and both side arguments heard and already the above suit was posted for Judgment on 05.02.2016. This court framed additional issues and this case was posted on 09.02.2016 for further evidence in respect of additional issues. On 24.02.2016, the 1st and 2nd plaintiffs were adduced before this court for enquiry in respect of the additional issues. After that in the year 2018, the 3rd plaintiff was examined and documents were marked through him. The 3rd plaintiff was cross examined and plaintiff side evidence was closed in the year 2018. After that many petitions were filed by the petitioners. After hearing the both side arguments, the above case was posted on 16.11.2021 for Judgment. The petitioners have filed the petition in Tr.O.P. 249/2021 with false averements and the above petition was dismissed with penalty on 06.12.2021. The above case was posted for Judgment on 20.12.2021. At this stage, the petitioners filed this petition in IA 4/2021 with the intention of drag on the suit proceedings. Hence this petition liable to be dismissed.

4. Point for consideration is whether the petition has to be allowed ?

5. Point:

No oral and documentary evidence adduced on both sides. Petition, counter perused. Petition filed for reopen in IA 4/2021 that the main suit was posted for delivery of judgment. The petitioner/plaintiff side not able to examine the vital witnesses. The evidence was closed on 20.12.2021. The

above said IA 4/2021 was posted for enquiry on 28.02.2022 and the same was dismissed for default. The petitioners reasons stated that they have attended the court without fail. On the hearing date of their absence, neither wilfull nor wanton. Therefore, unless the above IA 4/2021 in OS 340/2018 is not restored that the petitioners suffer irreparable loss.

6. The respondents have raised their objection that this petition there is no merit. The plaintiff side already the witnesses were examined in the above suit thereafter the defendants side witnesses produced and examined and also arguments heard both side that the suit was posted for judgment on 05.02.2016 . The petitioners side has filed the petition for examining the additional witnesses regarding the framing of additional issues. Thereafter the 3rd plaintiff was examined and documents also marked on their side. In this stage, the suit was posted for Judgment on 16.11.2021. The petitioner has filed the Tr.OP No.249/2021 filed before the Hon'ble Principal District Judge, Salem. The petitioners have filed this petition only drag on the matter. Therefore, the petition is not maintainable and liable to be dismissed.

7) This court considered the fact of the petition and counter that the respondents have raised their objection that the above suit was already posted for judgment. Subsequently the petitioners have filed the re-open petition in IA 4/2021. There is no valid reason mentioned by the petitioners. This court decided the petitioners stating that the petitioners have regularly attended the court and have a good case. It can be decided only hearing of both sides. The reason stated by the petitioners is convincing and satisfactory and accordingly this court is inclined to allow the petition in the interest of justice.

In the result, the petition is allowed with cost of Rs.500/- which has to pay directly to the respondents by the petitioners on or before 06.07.2023. Failing which this petition stand dismissed.

Order dictated to the steno typist, typed by her directly, corrected and pronounced by me in the Open Court, on this the 20th day of June 2023.

Sd./-Gnana Balakrishnan
Subordinate Judge,
Omalur.

List of Witness and exhibits on both sides- -Nil-

Sd./-Gnana Balakrishnan
Subordinate Judge,
Omalur.

Fair / draft order
in
IA.2/2022
in
IA 4/2021
in
OS.340/2018
Date: 20.06.2023

