

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: TMT. V. VANNAMALAR, M.L., PGDIPR., PGD in CrI. & Fr.Sc.,
District Munsif, Ponneri.

Monday, the 22nd day of April 2024.

I.A. NO.5 of 2023

in

IA.4 of 2020

in

O.S. No.105 of 2014

1. Dhayalan (dead)
2. Chakrapani
3. Sumathi
4. Rekha
5. Balaji
6. Surendhar

..... Petitioners/Petitioners/Plaintiffs

Versus

1. P.Naraynan (by agent Inbanathan)
2. V.D.S.Inbanathan
3. B.Kuppan
4. K.Usha
5. E.Surendharababu
6. J.Baskaran
7. B.Prabakaran
8. B.Karthikeyan
9. The Naalur Village
Panchayat by President

..... Respondents/Respondents/Defendants

This petition has come on 04.03.2024 before this court for final hearing in the presence of Mr.N.R.Gopaalan, learned counsel for the petitioners and Mr.R.Krishnaswamy, learned counsel for the respondents 1 to 8. The 9th Respondent was set exparte in IA 4 of 2020 and hence notice to him in this petition is dispensed with. Upon hearing the arguments made by the learned counsels for the petitioners and the respondents and on perusal of the material case records, this Petition having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition has been filed under Order 9 Rule 9 R/W Section 151 of CPC to set aside the order dated 18.08.2022 dismissing I.A.4/2020 and restore the same on the file of this court.

2. **Brief averments of the affidavit filed by the petitioners are as follows:**

The petitioners submit that the suit was filed for the reliefs of declaration of title to the suit property and for other reliefs and the suit was dismissed for default on 01.10.2019. IA.4/2020 was filed in time to restore the suit to file. Orders were reserved in IA.4/2020 on 22.07.2022 and subsequently it was adjourned to 05.08.2022. As only the details of the pending suits are posted in the e-court website, stage and date of hearing and orders in the post decree petitions are not uploaded in the e-court services. The details of the post decree petitions are written in pen in the last page of the online print out of the 'A' diary. The petitioners further submit that nothing was written on 05.08.2022 in the online print out of 'A' Diary in respect of I.A.4/2020. Later the petitioners' counsel came to know that the petition in IA 4 of 2020 was dismissed on 18.08.2022. The petitioners submit that only then their counsel came to know that in the 2nd week of September a separate paper with the typed proceeding in IA.4/2020 dated 05.08.2022 was attached with the 'A' diary with the orders passed in the said petition directing the petitioners to pay the costs of Rs.1000/- as cost to the respondent on or before 12.08.2022 and the petition was posted on 18.08.2022 for reporting compliance and subsequently, the petition was dismissed for non payment of the costs imposed on 18.08.2022. This order was also typed in a separate paper and was stapled along with the 'A' diary of 18.08.2022. The non payment of costs by the petitioners was not willful or wanton and they are willing to pay the costs. Hence the order dated 18.08.2022 passed in I.A.4/2020 is to be set aside and the said petition is to be restored to file and time for payment of cost is to be extended to enable the cost being paid by the petitioners. The petitioners

would be put to huge loss and hardship if the order dated 18.08.2022 in IA.4/2020 is not set aside and the petition is not restored to file. Hence this petition.

3. Brief averments of the counter filed by the 1st respondent and adopted by the other Respondents 2 to 8 are as follows:

The Respondents submit that the above application has been filed by the petitioners/plaintiffs praying to restore the petition in IA No.4 of 2020. The above suit was dismissed for default on 01.10.2019 and that I.A.No.4 of 2020 was filed to set aside the order of dismissal for default. The respondents deny the averments made by the petitioners that it is only in the second week of September, the petitioners came to know about the orders passed in I.A.No.4 of 2020 as false. Since the petitioners did not pay the cost ordered to be paid to the respondents on or before 12.08.2022, the petition in I.A.No.4 of 2020 was dismissed on 18.08.2022 as cost not paid. The petitioners who have no case on merits only with a view to protract the proceedings of the above suit and also with a view to cause unnecessary hardship and inconvenience to the respondents 1 to 8, have simply left the suit to be dismissed for default and they also did not choose to pay the cost as ordered by this court in the application to restore the suit. Hence this petition is liable to be dismissed.

4. Neither the petitioners nor the respondents have placed any oral or documentary evidence before this court. Now, it is the paramount duty of the court to decide whether this petition is to be allowed or not?

5. Heard both sides arguments. Records Perused.

6. On careful analysis, it is noted that the petitioners, who are the plaintiffs in the suit has filed the suit against the respondents/defendants for declaration of title to the suit property and for other reliefs. The suit was dismissed for default on 01.10.2019 for the default of the plaintiffs. Subsequently, a petition in IA 4 of 2020 was filed to rerstore the said suit which was ordered on 05.08.2022 allowing the said petition subject to payment of costs of Rs.1000/- on or before 12.08.2022 and for reporting

compliance of the said condition the petition was called on 18.08.2022. On 18.08.2022, since there was no representation on the side of the petitioners reporting compliance of the conditional order, the petition in IA 4 of 2020 was dismissed. Now this petition to restore the said petition in IA 4 of 2022 is filed by the petitioners stating that they came to know about the order passed in the said petition in IA 4 of 2020 only in the 2nd week of september and that they have failed to note down the dates from the annexures to the 'A' diary maintained in the court. On the other hand, the respondents submit that the petitioners who have no case on merits only with a view to protract the proceedings of the above suit and also with a view to cause unnecessary hardship and inconvenience to the respondents 1 to 8, have simply left the suit to be dismissed for default and they also did not choose to pay the cost as ordered by this court in the application to restore the suit have now file this petition. On careful analysis of the above and also considering the nature of the suit and to meet the ends of justice this court views that one more opportunity to be given to the petitioners to conduct their case. Hence, this court is inclined to allow this petition.

7. In the result, this petition is allowed subject to payment of costs of Rs.500/- payable by the petitioners to the respondents 1 to 8 on or before 04.06.2024. Call on 14.06.2024 for reporting compliance.

Dictated by me to the steno-typist, who directly typed the same, corrected and pronounced by me in the open court, on this the 22nd day of April 2024.

**Sd/-V. VANNAMALAR,
DISTRICT MUNSIF,
PONNERI.**

Both side witnesses and documents:- NIL

**Sd/-V. VANNAMALAR,
DISTRICT MUNSIF,
PONNERI.**

Fair/ Draft Order
I.A.No.5/2023
O.S.No.105/2014
Date:22.04.2024
DMC,PNI.