



WEB COPY



C.R.P(NPD)(MD).No.40 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.06.2023

Pronounced on : 27.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(NPD)(MD).No.40 of 2019

and

C.M.P(MD)No.188 of 2019

Sundari

... Petitioner

Vs.

Sri Gouri Devi Trust,
represented through its Trustees,
Gopal Das Bangur and Hemant Bangur,
Through their power agent
Narasimhan,
Door No.6,
West Veli Street.
Madurai District – 625 001

... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and executable order dated 01.06.2015 passed in C.M.A.No.38 of 2010 on the file of the Principal Subordinate Court, Madurai and allow this Civil Revision Petition.

For Petitioner : Mr.J.Bharathan

For Respondent : Mr.AN.Ramanathan



WEB COPY



C.R.P(NPD)(MD).No.40 of 2019

ORDER

This Civil Revision Petition is filed against the fair order and executable order dated 01.06.2015 passed in C.M.A.No.38 of 2010 on the file of the Principal Subordinate Court, Madurai.

2. The brief facts of the case:

The revision petitioner is the appellant/defendant in C.M.A.No.38 of 2010 on the file of the Principal Subordinate Court, Madurai. The revision respondent/plaintiff is a trust and it filed a suit in O.S.No.822 of 2004 on the file of the Additional District Munsif Court, Madurai against the revision petitioner for ejectment. In that suit, an ex-parte judgment and decree were passed on 20.10.2008. The revision petitioner has filed a petition in I.A.No.30 of 2009 in O.S.No.822 of 2004 to set aside the ex-parte judgment. The Trial Court/Additional District Munsif Court, Madurai dismissed the petition on 07.01.2010. Challenging the order of dismissal in I.A.No.30 of 2009 in O.S.No.822 of 2004, the revision petitioner has preferred C.M.A.No.38 of 2010 before the Principal Subordinate Court, Madurai. After hearing both, the Principal Subordinate Court, Madurai dismissed the said C.M.A.No.38 of 2010 on 01.06.2015. Aggrieved by the order of the First Appellate Court/Principal Subordinate Court, Madurai, the revision petitioner has moved this Court



by way of this Civil Revision Petition.

WEB COPY

3. Heard both sides and perused the records in this Civil Revision Petition.

4. For the sake convenience the rank arrayed in the original suit is adopted hereunder.

5. The learned counsel appearing for the revision petitioner/defendant has argued that the defendant is a statutory tenant under the plaintiff's trust in respect of suit property. The plaintiff has filed the suit for ejectment after issuing notice under Section 106 of the Transfer of Property Act though a suitable reply was given against the said notice. At the outset, the learned counsel for the defendant has submitted that if the trust is a public trust, the trust can file the original suit for ejectment and if the trust is a private trust, it can file the petition before rent controller for eviction. In this case, the plaintiff is a private trust and the defendant is a statutory tenant and hence, the rent control proceeding alone has to be filed. Leaving the facts so, in the suit the defendant has filed detailed written statement on 09.06.2005. After filing a written statement, it is the duty of the Trial Court to frame the issue for



determination. But, the defendant was set ex-parte and ex-parte judgment was passed by the Trial Court on 20.10.2008. The Code of the Civil Procedure empowers the Court to pass judgment when the defendant fails to defend and remained absent. There is no specific definition regarding ex-parte judgment and ex-parte decree. The Civil Procedure Code only defines judgment. As per provision of section 2(9) of the Civil Procedure Code, the judgment means, it is a statement given by the Judge on the grounds of a decree. In terms of Order 20 Rule 4(2), the judgment should contain a statement of the case, the points for determination, the decision thereon and the reasons for such decision. A judgment which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called a judgment. A plain perusal of the judgment of the Trial Court, would render itself it is not a qualified judgment as defined by the Code of the Civil Procedure. The Trial Court passed judgment on 20.10.2008 setting the defendant ex-parte. The judgment passed by the Trial court is not in conformity with the provisions of the Civil Procedure Code. The defendant has filed the petition in I.A.No.30 of 2009 in O.S.No.822 of 2004 under Order IX Rule 13 and Section 151 of the Civil Procedure Code on 11.11.2008 to set aside the ex-parte decree i.e., within 20 days



from the date of ex-parte decree. It is a settled principle of law that a case has to be disposed of on merits after giving sufficient opportunity to both parties to let in respective evidence. But, the Trial Court has not given sufficient time and passed mechanical order dismissing the petition in I.A.No.30 of 2009 in O.S.No.822 of 2004 filed by the defendant. The defendant has preferred an appeal in CMA.No.38 of 2010 against that order. The First Appellate Court/Principal Subordinate Court, Madurai has also dismissed the said appeal without considering the facts and circumstances of the case and also submission placed by the defendant. Therefore, both the order passed by the Trial Court in I.A.No.30 of 2009 and the order passed by the Principal Subordinate Court, Madurai in CMA.No.38 of 2010 have to be set aside and the defendant may be given an opportunity to defend her case and the case has to be disposed on merits. Hence, the Civil Revision Petition may be allowed. In support of his arguments, the learned counsel for the petitioner has relied on the decision of this Court reported in **2011(3) CTC 168 (Meenakshisundaram Textiles /v/ Valliammal Textiles Ltd.)**

6. Per contra, the learned counsel for the revision respondent/plaintiff contended that the plaintiff has issued a notice under Section 106 of Transfer of the Property Act in the year, 2003, the suit is



filed in the year 2004, Trial Court passed ex-parte judgment in the year 2008, the order in petition to set aside the ex-parte was passed in the year 2008 and the defendant preferred the Civil Miscellaneous Appeal in the year 2010 and has now filed this Civil Revision Petition in the year 2019. But, the defendant is paying the same rent to the plaintiff's trust. The Court is the custodian of the trust and the Court should see whether the performance of the trust is properly administered. The plaintiff's trust is a public trust. Taking advantage of the fact that the plaintiff is trust, the defendant is acting at her whims and fancy without taking care of the notice under Section 106 of the Transfer Property Act issued by the plaintiff. Hence, the plaintiff has filed the main suit for ejectment. The defendant wantonly remained ex-parte and dragged the proceedings long years as submitted above by paying meagre rent. The Trial Court has correctly passed the order in I.A.No.30 of 2009 in O.S.No.822 of 2004 observing that the defendant failed to prove his illness by producing acceptable medical evidence and failed to establish sufficient cause for her absence on 20.10.2008 and the same was confirmed by the First Appellate Principal Subordinate Court, Madurai. There is a concurrence decision of the Trial Court as well as the first Appellate Court. The defendant has no merits in this Civil Revision Petition and hence, the same may be dismissed.



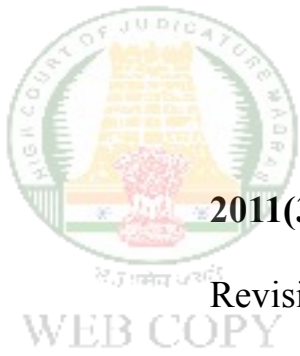
7. On hearing both and on perusal of records, it is clear that the

Trial Court has passed judgment dated 20.10.2008 as follows:

□வா.சா.1 ஆஜராகியிருந்தார். பிரதிவாதி தரப்பில் எவ்வித எடுத்துரைப்பும் இல்லை. பிரதிவாதியை அழைத்தும் ஆஜராகவில்லை. பிரதிவாதி ஒருதரப்பாக்கப்பட்டார். ஏற்கனவே வா.சா.ஆ.1 மூலம் முதல் நிரூபண வாக்குமூலம் தாக்கல் செய்யப்பட்டு பதிவு செய்யப்பட்டது. வா.சா.ஆ.1 முதல் 5 வரையிலான சான்றாவணங்கள் குறியீடு செய்யப்பட்டது. வாதியின் வழக்கு சமர்ப்பிக்கப்பட்டுள்ளது. வாதி வழக்குரையில் கோரியவாறு தீர்ப்பாணை பிறப்பிக்கப்படுகிறது. பிரதிவாதி வழக்குச் சொத்தை காலி செய்து வாதி வசம் ஒப்படைக்க 2 மாத கால அவகாசம் அளிக்கப்படுகிறது.□

8. It is admitted that the defendant has filed a written statement.

A mere perusal of the judgment of Trial Court, the basic ingredients of judgment are not available as per the provision of the Code of Civil Procedure. There is no minimum requirement of consideration of pleadings and evidence in the above judgment and so, it is not in conformity with provisions of the Code of Civil Procedure as rightly argued by the learned counsel for the defendant placing reliance in



2011(3) CTC 168. Be as it may, the question arises in this Civil Revision Petition is about the order passed in the petition for setting aside the ex-parte decree. On perusal of records, ex-parte decree was passed on 20.10.2008 and the petition to set aside the same was filed on 11.11.2008. It is a settled provision of law that judgment passing ex-parte decree has to be delivered after lapse of 30 days from setting ex-parte i.e., there is a specific period for filing the petition to set aside the ex-parte order as per provision under Order IX of the Civil Procedure Code. Though the petition to set aside the ex-parte decree was filed within 30 days, the Trial Court has failed to consider the same and also by the First Appellate Court/Principal Subordinate Court, Madurai. Though there is a concurrent decision of both Courts, a plain reading of orders of those Courts it is clear that there is no discussion about the filing of the petition to set aside, but observed that the defendant has failed to prove her illness and has not given sufficient reason for her absence on 20.10.2008 when the suit was posted for cross-examination of PW.1. Both courts below erred in passing orders in the petition in I.A.No.30 of 2009 in O.S.No.822 of 2004 and in C.M.A.No.38 of 2010. The other contention raised by both parties has to be decided after adducing evidence and the same cannot be decided in this Civil Revision Petition. In view of the above facts and circumstances, the impugned



C.R.P(NPD)(MD).No.40 of 2019

order of the Principal Subordinate Court, Madurai passed in CMA.No. 38/2010. confirming the order of dismissal of petition in I.A.No.30 of 2009 in O.S.No.822 of 2004 warrants interference by way of this Civil Revision Petition.

9. In the result, this Civil Revision Petition is allowed. The order of the Principal Subordinate Court, Madurai dated 01.06.2015 passed in C.M.A.No.38 of 2010, confirming the order passed in I.A.No.30 of 2009 in O.S.No.822 of 2004 on the file of the Additional District Munsif Court, Madurai is set aside and the petition in I.A.No.30 of 2009 in O.S.No.822 of 2004 stands allowed. As the suit is of the year 2004, the Trial Court is directed to dispose of the case on merits within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

27.06.2023

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



WEB COPY



C.R.P(NPD)(MD).No.40 of 2019

To

- 1.The Principal Subordinate Court,
Madurai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(NPD)(MD).No.40 of 2019

P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
C.R.P(NPD)(MD).No.40 of 2019
and
C.M.P(MD)No.188 of 2019

27.06.2023