

A. No.4260 of 2015 in
T.O.S.No.13 of 2010

G.CHOCKALINGAM, J.,

This application is filed by the applicant/2nd defendant to set aside the decree passed exparte on 25.02.2015.

2. The learned counsel for the applicant/2nd defendant would contend that the suit is filed on the basis of the forged Will alleged to had been executed by applicant's mother Smt.Pappa @ Valliammal. According to the applicant, the claim of the plaintiff is not valid in law and liable to be dismissed. Further, he contended that on receipt of the Court notice, the applicant has filed application to convert the OP.No.557 of 2002 into T.O.S.No.13 of 2010 for adjudication in the month of March 2009 itself and he engaged a counsel M/s.M.Liagat Ali & Geetha Priya and there is a delay of 1217 days in filing a written statement has been condoned by this Court in the application A.No.4023 of 2014 on 08.07.2014. After filing the written statement, the case was not posted. In the meantime, the suit was decreed exparte on 25.02.2015. The name of the applicant's present counsel name has not been printed in the cause list instead one Mr.Jo Jayanthan name was printed in the cause list. Since there is no knowledge of the posting of the case in the cause list, the defendant has not able to contest the case on 25.02.2015. The absence of the applicant's counsel was neither

wilful and nor wanton. Hence, the applicant/2nd defendant prayed that this application may be allowed and to set aside the decree passed exparte on 25.02.2015.

3. The learned counsel for the respondent would contended that the name of the previous counsel of the applicant was printed in the cause list on 25.02.2015 and the claim of the applicant that Mr.Liagat Ali and Geetha Priya had filed the vakalat and their names were not printed in the cause list cannot be a reason to give any credence to the same. Hence, the respondent prays that this application is liable to be dismissed.

4. On the side of the applicant has produced the cause list dated 08.07.2014 showing at page No.189 as follows:-

A.No.4023/2014 in TOS.No.13/2010 (D3 W/S filed)	To condone the delay of 1217 days in filing W/S.M/s.M.Liagat Ali Geetha Priya B.Radhakrishnan vs. S.Vijayalakshmi and 2 others	M/s.K.S.Sundar K.Veeramani for D1 M/s.JO.Jayanthan C.Vijayakumar for D2 M/s.S.M.Pandian for D3 M/s.V.Manohar N.Subbarayalu M/s.K.S.Sundar K.Veeramani for D1 M/s.JO.Jayanthan C.Vijayakumar for D2 M/s.S.M.Pandian for D3
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5. In view of the above production of cause list, it is clearly proved that Mr.Liagat Ali appeared for the applicant and filed application and admitted to condone the delay. It is admitted by both parties that the name of Mr.Jo Jayanth not listed in the cause list. After consent for change of vakalat was given to the learned counsel Mr.Liagat Ali and appeared for the applicant in the place of learned counsel Mr.Jo Jayanthan, who previously appeared for the respondent.

6. On seeing the cause title of the original order dated 25.02.2015 in T.O.S.No.13 of 2010 in (O.P.No.557 of 2002) which reads as follows:-

Mr.B.Radhakrishnan *... Plaintiff*

Vs.

1.S.Vijayalakshmi

2.B.Ravindran

3.D.Nirmala *... Defendants*

Petition under Sections 232 and 276 of The Indian Succession Act XXXIX of 1925 and under Order XXV Rule 5 of the O.S.Rules to grant Letters of Administration with the Will annexed may be granted to him as the legatee of the said deceased, having effect throughout the State of Tamil Nadu.

For Plaintiff : *Mr.V.Manohar*

For Defendants : -----

7. On perusal of the order of this Court dated 25.02.2015, *Mr.V.Manohar, learned counsel* appeared for the plaintiff and there is no name of the respondent counsel typed in the judgment. It shows that Mr.Liagat Ali name was not printed in the cause list. Hence, the argument of the learned counsel for the applicant that the counsel for the applicant has no knowledge about the posting of the case on 25.02.2015 is acceptable one. Since there is no proper notice and correct name of the applicant's counsel name was not printed in the cause list on the above said date and also there is no knowledge about the posting of the case to the applicant, the exparte decree passed on the said date has to be set aside as contended by the learned counsel for the applicant.

8. The argument of the learned counsel for the respondents that the name of the previous counsel Mr.Jo Jayanthan was printed in the cause list on 25.02.2015 and he has knowledge about the case is not at all acceptable.

9. In view of the above facts and circumstances, the exparte decree passed on 25.02.2015 against the 2nd defendant has to be set aside. Accordingly, this application is allowed and the exparte decree passed on 25.02.2015 against the 2nd defendant is set aside.

29.10.2015

Index:Yes/No
Internet:Yes/No
ssn

G.CHOCKALINGAM, J.,

ssn

Pre-delivery Order in

A. No.4260 of 2015
in
T.O.S.No.13 of 2010

29.10.2015