

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2015

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(NPD) No.2700 of 2015 &
M.P.No.1 of 2015

1.D.S.Natarajan
2.N.Raja

... Petitioners

v.

K.Ravi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.01.2015 made in I.A.No.166 of 2012 in O.S.No.28 of 2010 on the file of Subordinate Judge, Dharmapuri.

For Petitioners : Mr.R.Rajraman

For Respondent : Mr.R.Karuppiah

O R D E R

Challenging the order passed in I.A.No.166 of 2012 in O.S.No.28 of 2010 on the file of Subordinate Court, Dharmapuri, the defendants have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.28 of 2010 for declaration, recovery of possession and for other reliefs.

3. Since the defendants failed to appear before the Trial Court on 22.10.2010, they were set ex-parte and an ex-parte decree was passed on 27.10.2010. Now, after a lapse of 482 days, the defendants filed the application in I.A.No.166 of 2012 to set aside the ex-parte decree.

4. In the affidavit filed in support of the application, the 1st defendant has stated that he is aged 70 years and that he was suffering from viral fever, therefore, due to his old age and illness, he could not appear before the Trial Court for filing the written statement. He was examined as P.W.1 and in his evidence, he has deposed that he was looking after the case and his son, the 2nd defendant, was working in some other place. The averments stated in the affidavit was disputed by the plaintiff.

5. The Trial Court dismissed the application finding that the defendants have not explained the reasons in a proper manner.

6. It is not in dispute that the 1st defendant is aged 70 years and in his evidence he has deposed that the 2nd defendant is working in some other place, therefore, he could not file the application to set aside the ex-parte decree in time. Further, he has stated that due to his old age, he was not in a position to move around during the relevant period, therefore, the delay may be condoned.

7. As already stated, the suit has been filed by the plaintiff for declaration, recovery of possession and for other reliefs. Taking into consideration the averments stated in the affidavit filed in support of the petition, I am of the view that in order to give one more opportunity to the defendants, in the interest of justice, the delay can be condoned, however, on payment of costs.

8. Accordingly, the fair and final order passed in I.A.No.166 of 2012 in O.S.No.28 of 2010 are set aside and the application in I.A.No.166 of 2012 stands allowed on condition that the petitioners-defendants paying a sum of Rs.5,000/- (Rupees five thousand only) to the respondent-plaintiff within a period of three days from the date of receipt of a copy of this order. It is made clear that the petitioners shall pay the said amount of Rs.5,000/- to the

learned counsel appearing for the respondent in this Civil Revision Petition before this court within the stipulated time. Since the suit is pending from 2010, I direct the Subordinate Court, Dharmapuri to dispose of the suit in O.S.No.28 of 2010, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order this order.

With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.07.2015

Index : No
Internet : Yes

Note : Issue copy of the order today (09.07.2015)

Rj

To

The Subordinate Court,
Dharmapuri

M. DURAISWAMY,J.,

Rj

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