

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3927 of 2015
and M.P.No.1 of 2015

P.Chellaperumal

.. Petitioner

Vs

V.Balasubramanian

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 09.10.2012 made in I.A.No.414 of 2011 in O.S.No.104 of 2009 on the file of the learned Subordinate Judge at Kancheepuram.

For Petitioner : Mr.M.V.Muralidaran

ORDER

The Civil Revision Petition is filed against the order dated 09.10.2012 made in I.A.No.414 of 2011 in O.S.No.104 of 2009 on the file of the Subordinate Court at Kancheepuram.

2.At the time of admission, argument of the learned counsel for the petitioners is heard in length.

3.The petitioner as a plaintiff filed a suit in O.S.No.104 of 2009 for declaration of title and also permanent injunction against the respondent/defendant. The petitioner/plaintiff obtained an exparte decree on 22.06.2008. Thereafter, the respondent/defendant filed an application in I.A.No.414 of 2011 to set aside the exparte decree passed in O.S.No.104 of 2009 along with an application in I.A.No.762 of 2009 for condoning the delay of 85 days in filing the application to set aside the exparte decree. Both the applications were allowed and the exparte decree passed in O.S.No.104 of 2009 was set aside. Challenging the same, the present revision petition has been filed.

4.Learned counsel for the revision petitioner would submit that after obtaining the exparte decree, he filed Execution Petition. He further submitted that even though he has obtained decree of declaration and permanent injunction, the respondent attempted to interfere with his possession. Hence, the petitioner/plaintiff issued contempt notice in Execution Petition. At this juncture, the respondent/defendant has filed the application to set aside the exparte decree along with an application for condonation of delay and the same was allowed. But admittedly that order passed under Section 5 of the Limitation Act has not been challenged. However, he pray for setting aside the order passed in I.A.No.414 of 2009.

5.Considered the argument advanced by the learned counsel for the petitioner. The petitioner as a plaintiff filed a suit for declaration and injunction against the respondent/petitioner/defendant. After the exparte decree has been passed, the respondent/defendant filed an application for setting aside the exparte decree along with an application in I.A.No.762 of 2009 for condonation of delay of 85 days in filing the application to set aside the exparte decree. After contest, the application to condone the delay in filing the application to set aside the exparte decree was allowed and it was not challenged. Now, the order passed setting aside the exparte decree has been challenged by this petitioner. Since the suit is for declaration and injunction, an opportunity must be given to the respondent/petitioner/defendant to put forth his defence and prove his case. In such circumstances, I am of the view that the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. So, I do not find any reason to interfere with the order passed by the Trial Court and it is hereby confirmed.

6.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. No costs.

03.11.2015

Index: Yes/No
Internet: Yes/No
cse

R.MALA. J.,

cse

To

The Subordinate Court at Kancheepuram.

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and

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