

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2016

CORAM

THE HONOURABLE **Dr. JUSTICE. S.VIMALA**

C.R.P.(NPD) No.2969 of 2014
and C.M.P.No.1 of 2014

Subbayal

... Petitioner / D-2

Vs.

1. C.P.Subramaniam @ C.P.Muthusamy Gounder

2. Kannammal @ R.Kavitha

... Respondents / plaintiffs

Prayer :- Civil Revision Petitions (NPD) filed under Article 227 of the Constitution of India to set-aside the order passed in I.A.No.1112 of 2013 in O.S.No.38 of 2011 on the file of the learned Subordinate Judge, Perundurai, dated 21.03.2014.

For Petitioner : Mr. G.Gokul, for M/s. V.Balamurugane

For Respondents : Mr. V.Ragunathan, for M/s. S.Dhanasekaran

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ORDER

The second defendant is the Revision Petitioner herein.

2. The suit in O.S.No.38 of 2011 has been filed, seeking the relief of partition and separate possession. During the pendency of the suit, originally both the defendants were set exparte and the first defendant filed an application to set-aside the exparte decree under

Order 9 Rule 13 CPC, along with an application to condone the delay. The said petition has been allowed on 11.03.2013.

3. Subsequently, the second defendant has come forward with an application under Order 9 Rule 7 of the CPC, seeking to set-aside the exparte order passed as against the second defendant.

4. It is represented by the learned counsel on both sides that the evidence on the side of the plaintiffs is completed and D.W.1 has to be cross-examined.

5. Having regard to the stage at which the case stands now, and having regard to the fact that already exparte decree has been set-aside as against the first defendant, this Court feels it appropriate to set-aside the exparte order, provided the second defendant files the copy of the written statement, without any delay.

6. Accordingly, the second defendant was directed to file the copy of the written statement, to be filed before the Court below in O.S.No.38 of 2011. Accordingly, it is filed.

7. However, the fact remains that the plaintiffs have been put into inconvenience at least for a period of two years. Therefore, this Court is of the view that the application to set-aside the exparte order should be allowed, subject to the plaintiffs being compensated by costs .

8. Accordingly, the application to set-aside the exparte order is allowed, subject to the payment of costs of Rs.2,000/- (Rupees two thousand only) to the other side, within a period of three days from the date of receipt of a copy of this order and also subject to the condition that the second defendant / Revision Petitioner herein shall cooperate for the speedy disposal of the case. The trial court shall dispose of the suit in O.S.No.38 of 2011 on or before 30.04.2016.

9. In the result, this Civil Revision Petition is allowed. No costs. Consequently, the connected MP is closed.

15.03.2016

srk

Note to office.: (i) Copy of the written statement filed by the D-2 to be transmitted to the file of the trial court.
(ii) Issue order copy on 16.03.2016

S.VIMALA, J.,

srk

To

1. Subordinate Judge, Perundurai
2. The Section Officer, V.R.Section, Madras High Court,
Chennai - 104

CRP (NPD) No.2969 of 2014
& M.P.No.1 of 2014

15.03.2016