

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

CRP (PD) No.1902 of 2015
and M.P.No.1 of 2015

Janaki Devi

.. Petitioner

versus

Vasanthi

..Respondent

Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 23.03.2015 in I.A.No.65 of 2015 in O.S.No.8 of 2004 on the file of the Principal District Judge, Villupuram.

For Petitioner : Mr.N.Suresh

For Respondent : Mr.S.Conscious Ilango

ORDER

Challenging the fair and decretal order dated 23.03.2015 passed in I.A.No.65 of 2015 in O.S.No.8 of 2004 on the file of the Principal District Judge, Villupuram, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff has filed a suit in O.S.No.8 of 2004 to pass a Scheme decree (originally filed as O.S.No.142 of 1986 on the file of the Sub Court, Villupuram). The 19th defendant in the suit filed an application in I.A.No.65 of 2015 under Order 9 Rule 7 of the Code of Civil Procedure (herein after referred to as CPC) to set aside the exparte order

passed on 08.10.1987. The plaintiff filed her counter and contested the application. The trial Court, taking into consideration the case of both the parties allowed the application. Aggrieved over the same, the plaintiff has filed the above Civil Revision Petition.

3. When the Civil Revision Petition is taken up for hearing, the learned counsel appearing for the respondent/19th defendant submitted that the respondent/19th defendant had filed the application in I.A.No.65 of 2015 mistakenly as though she was set exparte on 08.10.1987. The learned counsel further submitted that on verification of the records, it was found by the respondent/19th defendant that she was not set exparte on 08.10.1987 and in fact, she had filed her written statement in the year 1995 itself and issues were also framed on 04.12.1998. The learned counsel appearing for the respondent/19th respondent further submitted that since the respondent/19th defendant had already filed her written statement in the year 1995, there is no necessity for filing the present application viz., I.A.No.65 of 2015 for setting aside the exparte order dated 08.10.1987.

4. It is also brought to the notice of this Court that pursuant to the order passed by the trial Court, the respondent/19th defendant had also filed another written statement on 08.03.2015, which was also taken on record by the trial Court.

6. Mr.N.Suresh, learned counsel appearing for the revision petitioner/plaintiff submitted that in view of the submission made by the learned counsel appearing for the respondent/19th defendant the impugned fair and decretal order passed by the trial Court in I.A.No.65 of 2015 may be set aside.

7. In view of the submissions made by the learned counsel on either side, since the learned counsel appearing for the respondent/19th defendant submitted that there is no necessity for filing an application under Order 9 Rule 7 CPC to set aside the exparte order, the fair and decretal order passed in I.A.No.65 of 2015 in O.S.No.8 of 2004 are set aside. The trial Court is directed to return the written statement filed by the respondent/19th defendant on 08.03.2015, since the respondent/19th defendant had already filed her written statement in the year 1995.

The Civil Revision Petition is allowed. No costs. Connected miscellaneous petition is closed.

25.04.2016

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Note: Issue on 26.04.2016

To

The Principal District Judge, Villupuram.

M.DURAISWAMY,J

CRP (PD) No.1902 of 2015

25.04.2016