

A.No. 5108 of 2014

IN

C.S.No. 35 of 2011

C.V.KARTHIKEYAN ,J.

This application has been filed by the defendants 1, 2 and 3 to set aside the ex-parte decree dated 28.02.2014 passed in C.S.No. 35 of 2011.

2. C.S.No. 35 of 2011 had been filed by the first respondent herein against the applicants, for the following reliefs:-

(a) directing the defendants to pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) towards damages caused regarding the House, Office hold articles and belongings of the plaintiffs and jewels belongs to the first plaintiff;

(b) permanent injunction restraining the defendants, their men, agent, servants or anyone claiming under them from interfering into plaintiff's peaceful possession and enjoyment of the suit schedule property and the plaintiffs can be evicted under the due process of law; and

(c) direct the respondent to pay the cost of the suit.

3. In the said suit, the applicants herein, who had been served, had been continuously taking time for filing of written statement. More than sufficient opportunity was granted for filing of written statement, and since the written statement was not filed, the applicants herein were set ex-parte. Thereafter, the first respondent herein, who was the plaintiff, was examined in chief as PW-1 and Exs. P-1 and P-27 were marked. Thereafter, this Court had passed detailed order granting decree and Judgment in favour of the respondents on 28.02.2014 decreeing the suit with cost.

4. This application has been filed to set aside the ex-parte decree.

5. In the affidavit filed in support of the application, the first applicant stated that though counter affidavit had been prepared, owing to unavoidable circumstances, namely that the first applicant's mother was sick and taking treatment, he could not contact his counsel and sign the counter affidavit. It had been further stated that the non filing of the counter was due to the reasons stated above and consequently, sought to set aside the ex-parte decree.

6. A counter affidavit had been filed by the first respondent/first plaintiff denying the reasons advanced. It had been specifically stated that the written statement was not filed within the time stipulated. It had been further stated that the counsel for the applicants regularly appeared and therefore, they had knowledge about the proceedings which was pending before the Court. It had been stated that though the applicants were served on 12.07.2011 with the suit summons, they had not chosen to file the written statement and consequently, it had been stated that the reason given is not correct. It had been further stated that the mother of the applicants and the first respondent was always healthy and the reason advanced is not correct. It had therefore stated that the application has been filed only to drag on the proceedings. Thereafter, the 1st applicant/defendant herein had filed an additional affidavit and in the same, it had been stated that the case was handled by M/s. Narmadha Sampath and A.Saravanan and subsequently, Mr.A.Saravanan started his office separately at another place. The case papers were misplaced during the shifting of the office and owing to this communication gap, the defendants were set ex-parte and written statement was not filed. It was further stated that amicable talks were going among the family members and also settlement meeting took place in the chambers of the Hon'ble Judge, who was holding the portfolio, and consequently, there was a considerable delay in filing the written statement.

7. Heard both sides.

8. It is the fact that the parties at lis are members of single family.

There has been allegations raised by the first respondent/plaintiff, who is the daughter in the family, against her brothers/defendants stating that they had continuously threatened her, forcefully attempted to through her out of the suit property with the influence of the second defendant, who is a member of the legislation assembly.

9. It is also seen that the reasons given for setting aside the ex-parte decree had been changed every time. In the first instance, it was stated that the counter affidavit was prepared, but it could not be filed and in the second instance, it was stated that there was a shift in the office of the counsel and that settlement talks were undertaken and therefore, written statement was not filed. However, the records speak otherwise the applicants are given more than sufficient opportunity to file the written statement. They had not chosen to do so. This Court cannot as a matter of right to set aside the valuable decree granted in favour of the respondents.

C.V.KARTHIKEYAN ,J.

vsg

10. No purpose would be served in setting aside the ex-parte decree. I find no merits in this application and hence, this Application is dismissed.

Vsg

22.11.2016

(2/2)

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