

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD).No.4787 of 2015
& M.P.No.1 of 2015

K.R.Santha

... Petitioner

Vs.

Rajammal

... Respondent

Prayer:- Petition filed under Article 227 of the Constitution of India, against the fair order and decretal order dated 30.10.2015 made in I.A.No.804 of 2015 in O.S.No.63 of 2011 on the file of Sub Court, Sankari.

For Petitioner : Mr.N.Manokaran

ORDER

The petitioner has come forward with the above Civil Revision Petition, challenging the order dated 30.10.2015 made in I.A.No.804 of 2015 in O.S.No.63 of 2011 on the file of Sub Court, Sankari, for allowing Order 9 Rule 7 of Code of Civil Procedure application.

2. At the time of admission, the arguments of the learned counsel for the petitioner are heard in length. Considering the nature of order passed herein, notice to respondent is dispensed with.

3. The learned counsel for the petitioner submits that the petitioner as plaintiff filed suit for partition and separate possession of plaintiff's 2/6th share and pass a preliminary decree in respect of Item No.1 of the suit properties in favour of the plaintiff and declare the title of Item II of suit property in favour of the plaintiff and also for declaration that the plaintiff is entitled to 1/9th share in the amounts described in Item II of suit properties and for a direction to defendants 9 to 11 to disburse the plaintiff's 1/9th share to her.

4. The first defendant-Rajammal was set exparte on 27.06.2011. The suit is of the year 2011. The first defendant filed I.A.No.804 of 2015 to set aside the exparte order passed on 27.06.2011 along with written statement. The trial court has allowed the said application on payment of cost of a sum of Rs.1000/- to the plaintiff, against which, the present Revision

Petition has been filed by the plaintiff.

5. The learned counsel for the revision petitioner would submit that it is true that to set aside the exparte order, delay is not a material issue, since the decree has not been passed. However, it is his contention that the first defendant has not assigned any reason why he has not appeared before the court and not filed written statement. It is his further submission that the trial court has not assigned any reason while allowing the application in I.A.No.804 of 2015 except ordering payment of cost. The learned counsel thus prayed for setting aside the order dated 30.10.2015.

6. I have considered the arguments put forth by the learned counsel for the revision petitioner and perused the typed set of papers.

7. The revision petitioner as plaintiff filed suit for partition and separate possession of plaintiff's 2/6th share and pass a preliminary decree in respect of Item No.1 of the suit properties in favour of the plaintiff and declare the title of Item II of suit property in favour of the plaintiff and consequently interdict the defendants 1 to 5 not to interfere with the peaceful possession and enjoyment of the plaintiff.

It is relevant to note that defendants 1 to 5 are mother, brothers and sister of the plaintiff. Further the plaintiff sought for declaration that the plaintiff is entitled to 1/9th share in the amounts described in Item III of suit properties and for a direction to defendants 9 to 11 to disburse the plaintiff's 1/9th share to her.

8. Admittedly, the 3rd defendant filed written statement and the 2nd defendant also filed written statement and the same was adopted by the 4th defendant. The respondent herein/1st defendant filed application in I.A.No.804 of 2015 praying to set aside the exparte order dated 27.06.2011 stating that since she is 76 years old and was suffering from viral fever, she was unable to contact her counsel and file written statement. She further stated that she sustained fracture and hence, unable to appear before court for hearings and at the time of filing the present I.A., only, she recovered from her illness and filed written statement.

9. The trial court has considered the above averments made by the 1st defendant in I.A.No.804 of 2015 and in order to afford one more opportunity, allowed the application on payment of cost of Rs.1000/-, by order dated 30.10.2015. It seems that the cost has

been deposited by the 1st defendant.

10. Since the valuable right of the 1st defendant cannot be deprived in the pending suit, the opportunity given to the 1st defendant is justified and it will enable the 1st defendant to put forth her defence. Hence, I am of the considered view that the reasoning given by the trial court is perfectly in order and requires no interference by this court. Accordingly, the order passed in I.A.No.804 of 2015 dated 30.10.2015 is confirmed and this Civil Revision Petition is dismissed as devoid of merits.

11. At this juncture, the learned counsel for the revision petitioner/plaintiff prays for earlier disposal of the suit.

12. Since written statement has already been filed in the suit in O.S.No.63 of 2011, the trial court is directed to dispose of the suit within 6 months from the date of receipt of a copy of this order. No costs. Consequently, connected MP is closed.

05.01.2016

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To

1. The Sub Court, Sankari.

R.MALA,J.

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