

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

**C.R.P(PD).No.2248 of 2016
and
C.M.P.No.11655 of 2016**

Bharathi ... Petitioner

- Vs -

1. S.B.S.Kumar

2. S.Ganesh

3. S.Prakash

4. S.B.S.Mohan

5. Tmt.Mangalam

6. Tmt.Kala

7.Ms.Usha

8. R.Ravikumar ... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decretal Order of the Learned XV Additional City Civil Court, Chennai made in I.A.No.210 of 2015 in O.S.No.3553 of 2013 dated 05.02.2016.

For Petitioner : Mr.Sudharshana Sunder
For Respondents : Mr.Nirmaleswar

ORDER

This revision challenges the order of the Learned XV Additional City Civil Court, Chennai made in I.A.No.210 of 2015 in O.S.No.3553 of 2013 dated 05.02.2016.

2. For the sake of convenience, the parties are referred to as per their rank in the suit.

3. The case was originally filed on the Original Side of this Court and the same was numbered as C.S.No.353 of 1997. Subsequently, the suit was transferred to the file of XV Additional City Civil Court, Chennai and was renumbered as O.S.No.3553 of 2013.

4. The plaintiff / 8th respondent filed a suit in O.S.No.3553 of 2013 seeking the following reliefs:-

"a) The relief of recovery of the amount of Rs.15,20,874/- in request if the amounts due under the finance agreement dated 8.8.95 and the Promissory note secured by the mortgage by a memorandum of deposit of title deed is valued under sec 33 of the Tamil Nadu Court Fee and Suit Valuation Act read with

appendix I.A. of the High Court original side rules. Pays a Court fees of Rs.1,87,351/-.

The plaintiff therefore, prays for a decree against the defendant jointly and severally.

b) for a sum of Rs.15,20,874/- with further interest 15.00 lakhs at the rate of 1.70% per annum being the contracted rate, till the date of realization in full.

c) for a direction that in default of the defendants payment of the amount specified in clause (a) supra and also the further interest there on at 1.70% per annum till the date of realization on proportionate the cost thereof to the Plaintiff on the same date to be filed by the Court, the Property described in the schedule here under be sold and the procedure (after defraying the reform the expenses of the sale) be applied towards the present of the above sale principle, interest and cost and if such proceeds be insufficient for the payment in full such amount the defendants may be ordered to pay the Plaintiff the amount of deficiency with interest thereon at the aforesaid rate of 14% per annum till realization and grant further on other relief in this Hon'ble Court may deem fit and necessary and also pass personal decree against the defendant for the balance amount that may due after delay.

d) directing the defendant to pay the cost of the suits."

5. The 9th defendant / revision petitioner has filed an application in I.A.No.210 of 2015 in O.S.No.3553 of 2013 seeking to set aside the exparte order dated 29.09.2015, wherein, she was set exparte for want of filing the written statement. The Court below dismissed the said application, against which, the present revision has been filed.

6. Heard learned counsel for petitioner and learned counsel for respondents and perused the materials placed before this court.

7. The Court below has passed an elaborate order, reading of which, would reveal that while the proceedings was pending before this Court, the revision petitioner was stated to have been served with summons as early as on 16.07.1997, however, the same was received on her behalf by her sister/brother. Therefore, it is clear that the petitioner has not been duly served. At this juncture, it is submitted that the case is yet to reach the stage of trial.

8. Considering the position that the petitioner has been set exparte for want of written statement on the basis of the summons alleged to have been served on her, this Court is of the view that to meet the ends of justice, the order impugned herein is liable to be set aside.

9. However, considering the facts and circumstances of the case, this Court is of the view that it cannot be stated that there is no fault at all on the side of the revision petitioner. Therefore, it would be appropriate to compensate the respondent/plaintiff by way of costs.

10. Accordingly, the Civil Revision Petition is disposed of by setting aside the order of the Court below. Consequently, exparte order dated 29.09.2015 shall stand set aside. The revision petitioner is permitted to file a written statement within a period of two weeks from receipt of this order. The revision petitioner is directed to pay a sum of Rs.10,000/- towards cost to the respondent/plaintiff within a period of two weeks from receipt of this order, failing which this revision shall stand dismissed with the consequence that the order under challenge shall hold good. Consequently, connected Civil Miscellaneous Petition is closed.

30.08.2016

Index:Yes / No
Internet:Yes/No
ssn

Note:Issue order copy on 19.09.2016.

C.T.SELVAM, J

ssn/kpr

To

XV Additional City Civil Court,
Chennai.

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