

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.04.2016

CORAM

THE HONOURABLE DR. JUSTICE. **S.VIMALA**

CRP (NPD)No.936 of 2016
and
CMP.No.5289 of 2016

L.Vijayanand ... Petitioner/Appellant/Defendant

..Vs..

1. N.Malarvizhi
2. K.G.Deepa
3. G.Dhanalashimi ... Respondents/Respondents/
Plaintiffs

Prayer:- Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 05.10.2015 made in C.M.A.No.3/2015 on the file of the 2nd Additional District Judge, Erode, against the I.A.No.234 of 2014 in O.S.No.91 of 2013 on the file of the Subordinate Judge, Perundurai.

For Petitioner : Mr.K.Rajamanicam
For Respondents : Mr.A.Sundaravadhanan

ORDER

The defendant in O.S.No.91 of 2013 is the revision petitioner.

1.1. The defendant filed I.A.No.234 of 2014 under Order 9 Rule 13 C.P.C. seeking to set aside the ex parte decree. That application came to be dismissed on 12.11.2014.

1.2. Challenging the same, the defendant filed C.M.A.No.3 of 2015, which was also dismissed.

1.3. Aggrieved against the same, the revision petition has been filed by the defendant.

2. The suit in O.S.No.91 of 2013 has been filed by the plaintiffs/respondents herein before the learned Subordinate Judge, Perundurai, for partition and for appointment of the Commissioner to effect division of suit properties. Since, the defendant did not appear before the Court and file his written statement, he was set ex parte and an ex parte decree was passed against him on 04.03.2014.

3. Whether there is justifiable cause to set aside the ex parte decree or in other words, whether the dismissal of the application to set aside the ex parte decree is justified.

4. It is submitted by the learned counsel for the revision petitioner that the written statement has been filed along with an application to set aside the ex parte decree and the Court below has erred in dismissing the petition filed to set aside the ex parte decree. It is pointed out that the defendant has signed the written statement as early as on 25.11.2011 and he has no intention to prolong the suit.

5. Having regard to the nature of the suit and having regard to the fact that the written statement has been filed along with an application under order 9 Rule 13 C.P.C. to set aside the ex parte decree and the same has to be allowed subject to payment of cost to the other side.

6. The Court cannot always expect proof for treatment of jaundice, if the treatment is a native treatment.

7. In the result, the revision petition would stand allowed and the order passed in C.M.A.No.3 of 2015 would stand set aside subject to payment of cost of Rs.1,000/- to the learned counsel for the respondent. Across the table, the cost of Rs.1,000/- was paid (supported/supplement by memo). Therefore, ex parte decree stands set aside. Having regard to the long pendency, at the request made by the learned counsel for the revision petitioner, the lower Court is directed to dispose of the suit, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

06.04.2016

Index : Yes/No
Internet: Yes/No
arr/ogy

To

The District Judge,
Udhagamandalam.

S.VIMALA.J

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