

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)No.3841 of 2012
and
M.P.No.1 of 2012

E.Chandrasekar

.. Petitioner

Vs

1.E.Srinivasan

2.The Managing Trustee,
Tawker Charities,
No.7, Kasi Viswanathasamy Koil Street,
Ayanavaram,
Chennai.

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair order and decretal order dated 09.01.2012 in I.A.No.11339 of 2011 in O.S.No.6065 of 2007 on the file of VIII Assistant City Civil Court at Chennai.

For Petitioner : Mr.M.Sarfudeen Ali Ahamed

For Respondents : M/s.N.S.Malini (for R1)

Mr.S.Sadasivan (for R2)

ORDER

The petitioner is the first defendant in the suit in O.S.No.6065 of 2007 filed by the first respondent / plaintiff.

2.The case of the plaintiff is that the first defendant is none other than the younger brother of the plaintiff and the second defendant is Tawker's Charities under whom the plaintiff is a lessee. During the life time of the plaintiff's father, monthly rent was paid by his father to the second defendant and after the demise of the plaintiff's father, this plaintiff had constructed a pucca terrace building.

3.In front of the said building, the plaintiff is running a shop in the name and style of Elumalai Timber shop adjacent to this shop, the plaintiff had constructed a small room measuring about 120 sq. ft. by spending his own savings and permitted the first defendant to reside in the said building from the year, 2004.

4.The case of the plaintiff further states that the plaintiff and his wife arranged marriage for the first defendant on 01.05.2006 by spending a sum of Rs.65,000/-. Thereafter, this plaintiff has given

licence to the first defendant and his wife to reside in the said portion and the first defendant is only a permissive occupant.

5. In fact, the plaintiff is residing at the rear end of the building along with his wife and children. After the marriage of the first defendant, he had entirely changed and under the instigation of his in-laws and wife started creating nuisance.

6. The first respondent / plaintiff further stated that the petitioner / first defendant has gone to the extent with a wordy quarrels with the first respondent / plaintiff on various dates viz., 27.04.2007, 05.05.2007, 19.05.2007 and 15.06.2007 and due to the above continuous quarrels for the petitioner and without bearing the said harassment and also beatings by the petitioner / first defendant, the first respondent / plaintiff has forced to give a complaint to the K-2 Police Station with the help of his friend Kalairaj.

7. In fact, the first defendant's wife has also given a police complaint on 22.08.2006 against the respondent / plaintiff that he tried to molest her. He further states that each and every day he is facing harassment and threaten by the petitioner / first defendant. The petitioner / first defendant had never paid any rents, taxes or

statutory payments and not even failed to pay the charges. But the petitioner / first defendant based on the permission given by this respondent / plaintiff, has occupied the portion of the property, but later on refused to vacate the premises. In this regard, the respondent / plaintiff has requested the petitioner to vacate the premises, but he has not done. Therefore, he has caused legal notice on 29.05.2007 by cancelling the licence by occupation of the property given by the first respondent / plaintiff. The said legal notice has returned as "refused". Therefore, the first respondent / plaintiff has filed the above suit in O.S.No.6065 of 2007 before the learned VIII Assistant Judge, City Civil Court, Chennai with a prayer directing the petitioner / first defendant to quit and deliver of the vacant portion of the property mentioned in the schedule mentioned property and also granting permanent injunction restraining the petitioner / first defendant, his men or agents from in any interfering of the suit schedule property.

8.The case of the petitioner / first defendant is that the first respondent / plaintiff is none other than his elder brother and the suit property No.14, K.H.Road, Ayanavaram, Chennai-23 was originally belongs to his father Elumalai. During the life time of his father, he has executed the settlement Deed in favour of the petitioner's mother

viz., E.Saroja in Document No.1532 of 1982 dated 30.10.1982, on the file of the S.R.O. Konnoor.

9.After the death of his mother both the petitioner / first defendant and the first respondent / plaintiff alone resided in the suit schedule property and the first respondent / plaintiff doing carpenter works in the front side portion of the suit property, the petitioner / first defendant has residing with his family in the back side of the suit property. He has also known about the filing of the suit when the E.P. summon was received from the learned X Assistant City Civil Court on 16.04.2011, then only he came to know that the suit has been initiated by the first respondent / plaintiff. Therefore, he has not appeared before the Court during the proceedings of the suit. Hence, the exparte decree was passed on 17.12.2007. Therefore, he has filed I.A.No.11339 of 2011 in O.S.No.6065 of 2007 for condoning the delay of 1198 days in filing the set aside application before the learned VIII Assistant Judge, City Civil Court, Chennai.

10.In the said application, he categorically stated that he has not received any notice or summon from the trial Court and being the property the first respondent / plaintiff with malafide intention to grab the suit property and filed the suit and obtained the exparte decree in

favour of him. He further states that due to his wife's health problem, he has unable to approach the Advocate in time and thereafter on receipt of the said notice in the E.P. on 16.04.2011, the petitioner / first defendant has approached the Advocate and filed the said petition for setting aside the exparte decree along with the condonation of delay of 1198 days in filing the set aside application. The petitioner / first defendant denying all the allegations made by the first respondent / plaintiff in the suit.

11.The first respondent / plaintiff has filed counter statement in I.A.No.11339 of 2011.

12.In the counter statement, the first respondent / plaintiff has categorically stated that a summon was served in O.S.No.6065 of 2007 to the petitioner / first defendant through the Court. After the lapse of four years of the exparte decree dated 17.12.2007, the petitioner / first defendant has filed the above set aside petition along with the condonation of delay of 1198 days.

13.The first respondent / plaintiff has also stated that for the huge delay, the petitioner / first defendant has not given any valid reasons. In fact, this Court and the Hon'ble Apex Court has clearly

held that for setting aside or restoring the suit, the parties should give reasons for each and every day, but the case in hand, the petitioner / first defendant has not given any valid reasons for the huge delay of 1198 days.

14.Heard Mr.M.Sarfudeen Ali Ahamed, learned counsel appearing for the petitioner, M/s.N.S.Malini, learned counsel appearing for the first respondent and Mr.S.Sadasivan, learned counsel appearing for the second respondent.

15.On perusal of the records like affidavit, counter statement, typedset of papers and Order of the learned VIII Assistant Judge, City Civil Court, Chennai, it is the case, the property belongs to mother of the plaintiff and the first defendant. When the property was allotted in the name of the plaintiff's father or mother, this plaintiff should not come forward with a case by stating that he only put up pucca terrace building and given licence to the petitioner / first defendant, who is none other than the brother of the plaintiff by occupying the suit schedule of property as permanent occupant and they should be gone into decide by way of affording opportunity to both the plaintiff and the defendants by proving the case with documentary evidence in an effective trial before the trial Court. Admittedly, the plaintiff and the

first defendant are the brothers. Unless, an opportunity to be given to the petitioner / first defendant to prove his case, the question of ownership of suit schedule property will not be decided and in fact the second respondent Tawker Charities alone to be the owners of the building. Therefore, in the interest of justice, it is just and necessary to give an opportunity to the first defendant, this application for condoning the delay ought to be entertained.

16. Therefore, I am inclined to pass the following orders:

(a) the Civil Revision Petition is allowed, by setting aside the order in I.A.No.11339 of 2011 in O.S.No.6065 of 2007 dated 09.01.2012 on the file of the VIII Assistant Judge, City Civil Court, Chennai, on condition that the petitioner / first defendant should pay a sum of Rs.1,500/- to each respondents.

(b) The learned VIII Assistant Judge, City Civil Court, Chennai is hereby directed to dispose of the set aside application within a period of one month from the date of receipt of a copy of this order.

(c) Thereafter, on disposal of the set aside application, the

learned VIII Assistant Judge, City Civil Court, Chennai is directed to dispose of the suit within a period of three months from the said date of order.

17. Accordingly, the Civil Revision Petition is allowed with the above terms. No costs. Consequently, connected miscellaneous petition is closed.

04.07.2016

Note: Issue order copy on 15.07.2016.
vs

Index: Yes/No
Internet: Yes/No

To

The VIII Assistant City Civil Court,
Chennai.

M.V.MURALIDARAN.J.,

VS

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