

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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CIVIL REVISION PETITION No.2173 OF 2016

ORDER:

The Civil Revision Petition is filed aggrieved with the order dated 22.02.2016, passed by the Principal Junior Civil Judge, Kovur in I.A.No.7 of 2016 in O.S.No.199 of 2006, wherein and whereby the application filed by the petitioners/D.1 and D.2 under Order 9 Rule 7 C.P.C seeking to set aside the exparte order dated 21.9.2007, was dismissed.

The petitioners are the defendants 1 and 2 in the suit filed by the respondents-plaintiffs seeking enforcement of the agreement of sale dated 25.12.2002 with respect to the suit schedule property. The 2nd respondent herein is the third defendant in the suit in whose favour petitioners-defendants 1 and 2 executed a sale deed on 19.1.2004. The first petitioner-D.1 was set exparte on 21.9.2007 as he failed to appear after receipt of summons. 2nd petitioner-2nd defendant was set exparte on 17.3.2009 and the 3rd defendant was set exparte on 10.3.20013 and exparte decree and judgment was passed on 29.11.2013. However, an application under Order 9 Rule 13 CPC filed by the 2nd respondent-3rd defendant was allowed on 10.10.2014, trial commenced on 13.12.2014 and the plaintiffs' evidence was closed on 10.7.2015. On behalf of the 3rd defendant petitioners filed chief-examination affidavits, but as they failed to appear for cross-examination, their evidence was closed on 27.10.2015. Thereafter, the I.As filed by the 2nd defendant to reopen the suit and to recall P.Ws.1 and 3 for cross-examination were allowed and the cross-examination was completed. Yet one another I.A filed by the 2nd respondent-3rd defendant to summon the Sub Registrar was dismissed on 9.12.2015. The said orders became final. Two other IAs filed by the plaintiffs to reopen and to receive the certified copies of decree in O.S No.197 of 2006 were allowed on merits. At that stage, the petitioners filed

the present I.A.No.7 of 2016 seeking to set aside the *exparte* order dated 21.09.2007, which was dismissed. Hence, the present revision.

Heard the learned counsel for the petitioners. None appeared for the respondents.

Two independent affidavits filed by the petitioners in support of the impugned I.A. The 1st petitioner stated that he was suffering from Jaundice severely about a year back and was not able to move from the bed for about a year and used to take country medicine. Due to the said reasons he was not able to attend the court. He further states that after recovery he had forgotten about the proceedings. Recently having come to know about the fraud played by the 1st respondent-1st plaintiff, he along with his brother thought it fit proper to approach the Court and reveal the real facts in the case. Like wise, 2nd petitioner stated that he was suffering from chikungunya about a year back and was not able to move from bed for about one and half year because of which he could not attend the Court. He also further states that only recently he came to be aware of the fraud played by the first respondent and so he thought it fit to disclose the real facts of the case. Hence, the petition.

As can be seen from the affidavits filed in support of the impugned I.A they totally bereft of the facts leave alone the true facts. Both affidavits are identical in nature except for the illness stated that the Petitioner No.1 was suffering from jaundice and the Petitioner No.2 was suffering from chikungunya. The one other significant factor which the court below had taken into consideration is that petitioners filed affidavit in chief-examination to support the case of the respondent No.2/D.3, but failed to appear for cross-examination which resulted the evidence on their behalf was closed on 26.10.2015. The impugned was filed on 4.1.2016. There is no explanation from the petitioners as to why they have not taken steps from 21.9.2007 and 17.3.2009 the respective dates on which the petitioners were set *exparte*. There are no supporting documents or material filed before the Court below with regard to their stated illness.

Even assuming that they had in fact suffered with the ailment stated in their respective affidavits that only accounts for about a year and odd prior to 4.1.2016, but does not explain the period between 2007/2009 to 2014. It is not their case that they were not aware of either of the proceedings before the Court below or about their being set exparte as is evident from the fact that they had filed chief-examination affidavits which were closed on 26.10.2015 for failing to offer themselves for cross-examination.

The factors which have taken into consideration by the learned trial court in coming to the conclusion that there are no *bonafides* and no good cause shown for the petitioners for non appearance for a period of ten years and thus the prayer in the impugned I.A does not merit any consideration. In those circumstances, the dismissal of the impugned I.A filed by the petitioners by the Court below cannot be found fault particularly in exercise of the revisional jurisdiction of this Court under Section 115 C.P.C and the Article 227 of the Constitution of India especially when the matter is reserved for pronouncement of judgment before the Court below.

Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

The Miscellaneous Petitions pending, if any, shall also stand dismissed.

CHALLA KODANDA RAM,J

Date:21.06.2016.
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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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