

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.1144 of 2014

and M.P.No.1 of 2014

1. S.Poongavanam
2. S.Jothi
3. S.Radhakrishnan
4. S.Sampath

.. Petitioners

Vs.

Rajendran

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 11.12.2013 passed by the learned District Munsif, Tiruvallur District allowing set aside petition in I.A.No.66 of 2013 in O.S.No.537 of 2007.

For petitioners : Mr.N.Nagusah

For Respondent : Mr.C.Kanagaraj

ORDER

The revision is filed by the plaintiffs challenging the order allowing the application to set aside the ex-parte decree.

2. The suit is filed by the plaintiffs for declaration and injunction. Therein, the defendant was set ex-parte on 10.03.2008. The defendant had filed an application under Order 9 Rule 13 C.P.C along with the delay petition. The said delay was condoned and consequently the ex-parte decree was also set aside. Though there are four defendants, the defendants 1 to 3 had earlier filed the petition to set aside the ex-parte decree, in which, the present respondent was not a party. Therefore, the present application was filed by the respondent to set aside the decree against him. The delay under Section 5 of the Limitation Act was allowed by the Court having been satisfied with the reasons given therein. Admittedly, it is a common affidavit and the same reasons are given for setting aside the decree. Therefore, the learned trial Judge has held that defendant has to be afforded an opportunity for contesting the suit by setting aside the ex-parte decree.

3. The objection is that the fourth defendant did not have any independent right over the suit property and it has to be decided in the suit.

4. In view of the above, there is no reason to interfere with the order of the trial Judge when the same is passed, exercising the discretion being satisfied with the reasons stated in the application.

5. As there are no merits, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.01.2017

srn

To

The District Munsif, Tiruvallur District

PUSHPA SATHYANARAYANA.J

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