

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1501 of 2017
& C.M.P.No.7006 of 2017

Ramesh babu

.. Petitioner

Vs.

1.J.Segar @ Janakiraman
2.Ragavan
3.Periyasamy
4.Perumal Gounder
5.Pushpavalli

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 07.03.2017 passed in I.A.No.213 of 2016 in O.S.No.37 of 2015 on the file of the learned III Additional District Judge, Puducherry.

For Petitioner : M/s.Achari and Antoni Asso.

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 07.03.2017 passed in I.A.No.213 of 2016 in

O.S.No.37 of 2015 on the file of the learned III Additional District Judge, Puducherry.

2. The petitioner is the plaintiff and the respondents are the defendants in O.S.No.37 of 2015. The suit is one for declaration that the plaintiff is the absolute owner of the suit property and recovery of possession. The respondents 2 to 5 have filed written statement on 03.07.2015 and are contesting the suit. The trial commenced, P.W.1 was examined in chief and documents were marked. The above suit was posted on 18.02.2016. On that day, respondents did not cross examine P.W.1, therefore, an exparte decree was passed on 18.02.2016.

3. The respondents filed I.A.No.213 of 2016 to set aside the exparte decree passed in O.S.No.37 of 2015 dated 18.02.2016. According to the respondents, the fourth respondent was looking after the case and conducting the case on behalf of the other respondents. Due to his illness, he could not contact his Advocate for cross-examination of P.W.1. He was informed that due to heavy posting, the suit will be posted to some other date for cross examination of P.W.1. The respondents have valid defence in the

suit. Unless exparte order is set aside, the respondents will be put to irreparable loss and hardship.

4. The petitioner has filed counter affidavit denying the averments mentioned in the affidavit and stated that medical certificate produced by the fourth respondent is not genuine. P.W.1 was examined on 22.01.2016 and the case was adjourned to 03.02.2016 for cross examination of P.W.1. Thereafter, the respondents took several adjournments and did not cross examine P.W.1. The respondents have not given valid reason to set aside the exparte decree. Therefore, he prayed for dismissal of the application.

5. The learned Judge on considering the averments mentioned in the affidavit, counter affidavit, materials available on record and costs paid by the respondents, allowed the application and set aside the exparte decree, against which, the present civil revision petition has been filed by the petitioner.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. The grievance of the petitioner is that the respondents have deliberately did not cross examine P.W.1 from 03.02.2016 to 18.02.2016. Respondents took several adjournments on number of occasions and they have not given any valid reason for allowing the application to set aside the exparte decree.

8. In my view, the contention of the petitioner is untenable. From the records, it is seen that the application has been filed for setting aside the exparte decree within the time limit and there is no delay. The respondents have given valid and sufficient reasons to set aside the exparte decree and the learned Judge also compensated the petitioner by imposing costs on the respondents.

9. In view of the above, there is no illegality or irregularity in the order of the trial Court dated 07.03.2017 warranting interference by this Court.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.04.2017

Index : Yes
dm/kj

V.M.VELUMANI, J.

dm/kj

To

The III Additional District Judge
Puducherry.

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