

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 11TH DAY OF JANUARY 2017

THE HON'BLE MR.JUSTICE P.VELMURUGAN

A.No.137 of 2017

in

C.S.No.63 of 2007

1.Meenakshi
Old Door No.43,
New Door No.101,
Adam Sahib Street,
Royapuram,
Chennai- 600 013

2.Parvathy
Door No.38,
[present new door No.91]
Adam Sahib Street,
Royapuram,
Chennai- 600 013

3.Andal (since died)*
(*Amended as per the order dated 11.8.2015 in Application
Nos.1277 and 1278 of 2014)

4.Seethalakshmi
Door No.43,
[present new door No.101]
Adam Sahib Street,
Royapuram,
Chennai- 600 013

...Plaintiffs

Vs

1.Thangavel Pillai (since deceased)

2.S.Kumudha
Door No.58,
[present new No.135]
Adam Sahib Street,
Royapuram,
Chennai- 600 013

**3.Meenakshi Sundaram
No.101/43,
Adam Sahib Street,
Royapuram,
Chennai-13

**4.D.Suguna
Nno.101/43,
Adam Sahib Street,
Royapuram,
Chennai- 600 013

**5.G.Kamatchi
No.140/142,
Adam Sahib Street,
Royapuram,
Chennai- 600 013

**6.G.Meganathan
No.15/6, Venkatachala Naicker Street,
Royapuram, Chennai- 13
(*Defendants 3 to 6 brought on record as L.Rs of deceased 1st defendant, as per order dated 9.7.07 in Appln.No.4678/07 and order dated 2.1.08 in Appln.No.7914/07)

***7.Mr.Gopinath
S/o.M.Paneer Selvam,
179/80, Adam Sahib Street,
Royapuram
Chennai-13

(***The 7th defendant brought on record as per order dated 21.7.2010 in Application No.5596/2009 and delay condoned as per order dated 25.8.2010 passed in Appl.No.4657/10)

...Defendants

A.No.137 of 2017:

S.Kumudha,
D/o.G.Srinivasan
No.58, (Present Door No.135)
Adam Sahib Street,
Royapuram,
Chennai- 600 013

...Applicants/ 2nd Defendant

VERSUS

1.Meenakshi
D/o.Late R.Gopal Pillai,
Old Door No.43,
New Door No.101,
Adam Sahib Street,
Royapuram,
Chennai- 600 013

2.Parvathy,
D/o.Late Gopal Pillai,
No.38, (Present Door No.91)
Adam Sahib Street,
Royapuram,
Chennai- 600 013

3.Andal (Deceased)
D/o.Late Gopal Pillai,
No.38, (Present Door No.91)
Adam Sahib Street,
Royapuram,
Chennai- 600 013

4.Seetha Lakshmi,
W/o.M.Ekambaram,
Old Door No.43, New Door No.101,
Adam Sahib Street,
Royapuram,
Chennai- 600 013

..Respondents 1 to 4/Plaintiffs

5.Thangavel Pillai (Deceased)
S/o.M.Kuppuswamy Pillai,
No.142, (Present New Door No.140)
Adam Sahib Street,
Royapuram, Chennai- 600 013

..5th Respondent/1st Defendant

6.Meenakshi Sundaram
S/o.R.Gopal Pillai
No.101/43, Adam Sahib Street,
Royapuram,
Chennai-600 013

7.D.Suguna,
D/o.R.Gopal Pillai,
No.101/42, Adam Sahib Street,
Royapuram,
Chennai- 600 013

8.G.Kamatchi,
D/o.R.Gopal Pillai,
No.140/142, Adam Sahib Street,
Royapuram, Chennai- 600 013

9.G.Meganathan
S/o.R.Gopal Pillai,
No.15/6, Venkatachala Naickker Street,
Royapuram,
Chennai- 600 013

..Respondents 6 to 10/Defendants 3 to 6

10.P.Gopinath,
S/o.M.Paneer Selvam,
No.179/80, Adam Sahib Street,
Royapuram,
Chennai- 600 013 ..10th Respondent/7th Defendant

Application praying that this Hon'ble Court be pleased to set aside the order dated 19.12.2016 made in the above suit in C.S.No.63 of 2007 in setting the Applicant herein/2nd Defendant ex-parte in the above suit, enabling the Applicant herein/2nd Defendant to further proceed with/contest the above mentioned suit.

This application coming on this day before this Court for hearing the court made the following order:

This application is filed by the applicant to set aside the order dated 19.12.2016 passed in Application No.6670 of 2011 in C.S.No.63 of 2007 in setting the applicant herein/2nd defendant ex-parte in the above suit, enabling the applicant herein/2nd defendant to further proceed with/contest the above mentioned suit.

2.The averments made in the application is that the applicant is the second defendant in the suit. Pursuant to notice, the applicant entered appearance in the month of July 2009 in O.A.Nos.684 to 686 of 2008 in C.S.No.63 of 2007 and filed a detailed counter to the said applications. Thereafter, respondents 1 to 4/plaintiffs filed A.No.5163 of 2010 in C.S.No.63 of 2007 seeking amendment of the

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plaint and the same was contested by the applicant by

filing counter.

3. When O.A.Nos.684 and 686 of 2008 came up for hearing on 18.11.2010, this Court was pleased to allow the said applications. Thereafter, the suit summons was served on the applicant on 26.11.2010. A.No.592 of 2011 came to be filed by the respondents 1 to 4 for violating the order dated 18.11.2010 passed in O.A.Nos.684 and 686 seeking to punish the 10th respondent in/7th defendant. The said application was contested by the parties and the parties were permitted to take evidence in the said application. The applicant also prepared the draft application. The erst while counsel of the applicant advised to keep the filing of the written statement in abeyance to cull out any piece of evidence favourable of her case. The applicant being an illiterate person, she has not filed the written statement. Hence, there was a delay of 3454 days in filing the written statement.

4. Pending A.No.592 of 2011, the 3rd respondent herein/3rd plaintiff died on 05.05.2014. Consequent to that, respondents 1 to 4 filed an application in A.No.4603 of 2014 and the same is pending. When the said application was listed on 19.12.2016, this Court was pleased to set the order, making the applicant exparte on the fact that no written statement was filed and posted the suit for exparte

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evidence on 5.1.2017.

5. It is further averred that the applicant has a fair

chance of success and good defence in the above mentioned suit. Though the summons was served on the applicant on 26.11.2010, the applicant ought to have filed the written statement on or before 07.01.2011. For the above mentioned reason, she has not filed the written statement. Hence, the applicant filed the present application along with the written statement. Therefore, the delay in filing the written statement is neither wilful nor wanton but purely due to the above mentioned reasons and if the present application is allowed no prejudice would be caused to the respondents herein. If the application is not allowed, the applicant would be put to serious loss and untoward hardships. Hence, the applicant prayed to set aside the order dated 19.12.2016 and permit her to contest the suit.

6.The second respondent/second plaintiff filed the counter affidavit on behalf of respondents 1 and 4 wherein it is stated that in A.No.6670 of 2016, the applicant was set exparte and not suo motu in the suit proceedings. Though the applicant filed an application to set aside the exparte order dated 19.12.2016, he failed to file the counter affidavit in Application No.6670 of 2016. Hence, the applicant is not entitled to set aside the exparte order dated 19.12.2016 and there is no bona fide reason and sufficient cause shown in the affidavit to set aside the exparte order.

7.Moreover, the applicant has admitted that she has

diligently contested the suit. The averments made in the affidavit are not true and she has not stated the reason what has been culled out from the evidence in Application No.592 of 2011. Moreover, the applicant has not stated sufficient cause and the reasons stated are only evasive. The previous counsel for the applicant was only assisting the counsel for the 7th defendant and the same is proved by perusing the counter affidavit filed by the applicant in Application No.684 and 686 of 2008, 5163 of 2010 and Application No.592 of 2011. As no sufficient cause has been shown in filing the written statement belatedly, this application has to be dismissed.

8.Heard the learned counsel for the applicant and the learned counsel for the respondents and perused the materials available on record.

9.Considering the arguments advanced by the learned counsel on either side, considering the averments made in the affidavit filed in support of the application and also considering the facts and circumstances of the case that so far the trial has not been commenced, in the interest of justice, in order to give one more opportunity to the applicant to defend the case, at the same time the respondents 1 to 4/ plaintiffs have to be compensated with cost for inconvenience caused to them, this Court is

inclined to allow this application on the ground that the applicant has good defence in the suit and no prejudice

would be caused to the respondents in allowing the application, however on payment of costs.

10. Accordingly, to give an opportunity to the applicant to contest the suit and to meet the ends of justice, this application is allowed on condition that the applicant shall pay a sum of Rs.50,000/- (Rupees Fifty thousand only) to the contesting respondents proportionately on or before 15.02.2017 and on payment of the same, the applicant is directed to file a Memo before the Registry. The Registry is directed to post the application before this Court on 16.2.2017.

11. Post the other applications along with the civil suit on 17.2.2017.

sd/.P.V.M.J

11.01.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/10.02.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.