

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.2678 of 2016
and
C.M.P.No.19155 of 2016

Natarajan ..Appellant/1st Defendant
vs.

1.Saroja
2.Jayaprakash
3.Selvaraj
4.Sumathi ..Respondents 1to4/Plaintiffs
5.Shanthi
6.Chitra
7.Selvi
8.Thirumathal ..Respondents 5to8/Defendants 2to5

Civil Miscellaneous Appeal is filed under order XLIII Rule (10) of Civil Procedure Code to set aside the fair and final order dated 27.09.2016 made in I.A.No.386 of 2016 in O.S.No.42 of 2014 on the file of II Additional District Judge, Erode and allow the Civil Miscellaneous Appeal.

For Appellant : Mr.A.Thiyagarajan
For R1 to R4 : Mr.M.Guruprasad
For R5 & R6 : Not ready in notice
For R7 & R8 : No appearance

J U D G M E N T

This appeal is directed against the order in I.A.No.386/2016, which is the application filed by the appellant seeking to set aside the ex parte decree dated 11.04.2016. I.A.No.386/2016 was dismissed by the trial Court.

2. The suit in O.S.No.42/2014 was filed by the respondents 1 to 4 seeking partition and separate possession of their 1/3rd share in the suit properties. The appellant was the first defendant in the said suit. An ex parte decree came to be passed on 11.04.2016 for non filing of written statement. The petitioner filed the application alongwith written statement to set aside the ex parte decree.

3. The reason given in the affidavit filed in support of the application is that certain documents that were required for filing the written statement could not be traced within the time granted by the Court. The said application was resisted by the plaintiffs in the suit contending that the reason given in the affidavit filed in support of the application to set aside ex parte decree does not amount to sufficient cause within the Order IX Rule 13 of CPC.

4. The learned trial Judge/II Additional District Judge, Erode dismissed the petition observing that the claim that the documents that could not be traced for nearly 18 months were traced within two weeks from the date of the ex parte decree cannot be believed and on that ground, the learned trial Judge rejected the petition. Aggrieved, the first defendant, as an appellant, has filed this appeal.

5. Heard Mr.T.Balaji, learned Counsel for the appellant and Mr.Guru Prasad, learned Counsel for the respondent.

6. Mr.T.Balaji, learned counsel for the appellant would contend that the suit is for partition and the trial Judge, failed to consider the fact that the written statement has been filed along with the application and the fact that the appellant is contending that the respondents namely, respondents 1 to 4/plaintiffs do not have any right over property.

7. Ofcourse, the reason set out in the affidavit is not quiet convincing. Considering the fact that the suit is one for partition, I think that it would be in the interest of justice that the first defendant/appellant is given an opportunity to contest the suit on merits. In such view of the matter, this appeal is allowed and order of the trial Court is set aside. The exparte decree made in O.S.No.42/2014 dated 11.04.2016 will stand set aside. Considering the fact that the suit is one for partition, pending for nearly three years, the trial Court will do well to dispose of the suit as expeditiously as possible. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sai

To

The II Additional District Judge, Erode.

+ 1 cc to M/s. M. Guruprasad, Advocate SR.65860

+ 1 cc to Mr. A. Thiagarajan, Advocate SR.65876(31/10/2017)

CMA.No.2678 of 2016

RSI (CO)

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EU(31/10/2017)