

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM

THE HON'BLE Mr. JUSTICE R.SUBRAMANIAN

C.M.A. No.1910 of 2017 &  
C.M.P. No.10261 of 2017

R. Chinnasamy ... Appellant/Petitioner/Defendant

Vs.

R. Sakthivel ... Respondent/Respondent/Plaintiff

Civil Miscellaneous Appeal filed under Order 43 Rule 1(d) of Civil Procedure Code to set aside the fair and Decretal dated 22.03.2017 passed in I.A. No.311 of 2016 in O.S.No.189 of 2013 on the file of Principal District Judge, Tiruppur.

For Appellant : Mr. K. Myilsamy

For Respondent : Mr.K.S. Karthik Raja

O R D E R

By consent of the learned counsel for the appellant and the learned counsel for the Caveator/respondent, the appeal itself is taken up for final hearing.

2.This appeal has been filed against the Order dated 22.03.2017 made in I.A. No.311/2016 in O.S. No. 189/2013, dismissing the application filed to set aside the ex-parte decree dated 07.11.2014, passed by the Trial Court.

3.Admittedly, the appellant was served by substituted service by effecting publication in a Tamil Daily. He has filed an application to set aside the exparte decree contending that he has shifted his residence from the original address to a different address in the year 2012. Therefore, it is clear that the notice was not served on him and the publication effected itself is not sufficient proof of service. The learned District Judge has assumed that the petitioner would have had knowledge of the decree, which in my opinion, cannot stand to Judicial Scrutiny. Therefore, the reasoning of the learned District Judge cannot be sustained and the Order of the Trial Court, dismissing the application filed under Order IX Rule 13 of CPC has to be set aside.

4. In the result, the Order of the learned District Judge dated 22.03.2017 made in I.A. No.311/2016 in O.S. No. 189/2013 is set aside and the Civil Miscellaneous Appeal is allowed. It is stated that the written statement has been filed along with the application. Considering the fact that the written statement has already been filed, the learned District Judge is directed to dispose of the suit as early as possible, preferably not later than 31.12.2017 and to report such disposal to this Court. The parties are directed to co-operate with the disposal of the suit.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge,  
Tiruppur.

2.The Section Officer,  
Judicial Department,  
High court, Madras.

+lcc to MR.A.K.Myilsamy, Advocate SR.No.48497

+lcc to Mr.S.Karthik Raja, Advocate SR.No.48474

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SR(CO)  
GN(03/08/2017)

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