

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2017

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.527 of 2017 &

M.P.No.2640 of 2017

Samiyaathaal

... Petitioner

v.

T.C. Ganasekaran

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the decree and judgement order dated 13-10-2015 made in I.A. No.988 of 2015 in O.S. No.469 of 2011 on the file on the 1st Addl District Munsif of Erode.

For Petitioner : Mr.V.Venkatasamy

For Respondent : Mr.E.P. Senniyangiri

ORDER

Challenging the order passed in I.A. No.988 of 2015 in O.S. No.469 of 2011 on the file of I Additional District Munsif Court, Erode the 1st defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S. No.469 of 2011 to set aside the final decree passed in O.S. No.469 of 2011, on the file of I Additional District Munsif Court, Erode, on 10.11.2010 and to declare that the plaintiff is the absolute owner of the suit property and also for permanent injunction. The defendants 1 and 2 remained absent before the Trial Court, hence, they were set ex-parte in the year 2011. The defendants 3 and 4, who are the son and daughter of defendants 1 and 2, filed a written statement and are contesting the suit. In the year 2015, the 1st defendant alone filed an application in I.A. No.988 of 2015 to set aside the ex-parte order dated 26.09.2011 i.e., the date on which she was set ex-parte.

3. It is pertinent to note that the 2nd defendant, who is her husband, has not filed any application to set aside the ex-parte order.

4. The learned counsel appearing for the petitioner submitted that only

the 1st defendant has filed the application to set aside the ex-parte order.

5. The plaintiff filed his counter disputing the averments stated in the affidavit filed in support of the application. The 1st defendant has not explained the reasons for the laches in filing the application to set aside the ex-parte order. Though she was set ex-parte in the year 2011, she has filed the application under Order 9, Rule 7 of CPC only in the year 2015.

6. Though there is no limitation prescribed under the Limitation Act for filing an application under Order 9, Rule 7 of CPC , the petitioner should have explained the reasons for non-appearance and also the reasons for the laches in the affidavit.

7. In the case on hand, the petitioner/1st defendant has not explained the reasons for the laches in a proper manner, which was rightly rejected by the Trial Court.

8. In the absence of sufficient reasons shown by the 1st defendant for a period of 4 years, the Trial Court has rightly dismissed the application.

9. In these circumstances, I do not find any error or irregularity in the

order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. The learned counsel appearing for the respondent/caveator submitted that the present application in I.A.No.988 of 2015 was dismissed by the Trial Court on 13.10.2015, however, the Trial Court has not disposed of the suit yet. Further, the learned counsel submitted that the Trial Court, may be directed to dispose of the suit within a time frame. Having regard to the submission made by the learned counsel for the respondent/caveator, I direct the I District Munsif Court, Erode, to dispose of the suit in O.S.No.469 of 2011, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.03.2017

Index : No
Internet : Yes

Rj

To

The I Additional District Munsif Court
Erode.

M. DURAISWAMY,J.,

Rj

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