

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3507 of 2009
and M.P.No.1 of 2009

1.R.Sundaran (deceased)
2.R.Natarajan
3.S.Sakunthala
4.S.Panneerselvam
5.S.Anbalagan
6.S.Elango
7.S.Ramaswamy
8.S.Valarmathi

.. Petitioners

(Petitioners 3 to 8 brought on
record as legal heirs of deceased
1st petitioner vide order of Court
dated 05.03.2014 made in
M.P.No.1 of 2013 in C.R.P.No.3507
of 2009)

सत्यमेव जयते vs. जयते

T.Palani

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C.,
against the fair and decretal order dated 03.09.2009 made in
I.A.No.520 of 2008 in O.S.No.1188 of 1988 on the file of the
Principal District Munsif Court, Cuddalore.

For Petitioners : Mr.K.A.Ravindran
For Respondent : Mr.R.Gururaj

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 03.09.2009 made in I.A.No.520 of 2008 in O.S.No.1188 of 1988 on the file of the Principal District Munsif Court, Cuddalore.

2. The petitioners 1 & 2 are the defendants 2 & 3 and respondent is the plaintiff in O.S.No.1188 of 1988 on the file of the District Munsif Court, Cuddalore. Pending C.R.P., the first petitioner died and his legal heirs were impleaded as petitioners 3 to 8. The respondent filed suit for permanent injunction restraining the second petitioner and other defendants from interfering with his peaceful possession and enjoyment of the suit property. The said suit was decreed on 06.01.1989. The petitioners did not appear and contest the suit. The petitioners filed I.A.No.520 of 2008 to condone the delay of 34 days in filing the application to set aside the exparte decree dated 06.01.1989.

3. According to the petitioners, the suit summons were not served on them, respondent played fraud on the Court and obtained

exparte decree. The petitioners came to know about the exparte decree only when the summons were served on them in O.S.No.555 of 2006 filed by the respondent against the petitioners and others. Immediately, the petitioners filed a petition to set aside the exparte decree along with the present application to condone the delay of 34 days from the date of knowledge of the exparte decree i.e. 23.12.2006.

4. The respondent filed counter affidavit denying all the averments mentioned in the said application and submitted that the suit summons were served on the petitioners, deliberately they have not appeared before the Court and remained exparte. Subsequent to passing of exparte decree dated 06.01.1989, number of suits were filed by the respondent against the same parties. The petitioners were participated in the said suits and decrees were passed in favour of the respondent. The petitioners have not properly calculated number of days of delay. They were aware of the exparte decree and if proper calculation is made, number of days will be more than several 1000's of days. The present application is filed after 17 to 18 years.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and judgments relied on by the parties, took note of the fact that exparte decree was passed on 06.01.1989, the present application is filed after 17 years and the petitioners have not proved by substantial evidence that the suit summons were not served on them, dismissed the application.

6. Against the order of dismissal dated 03.09.2009 made in I.A.No.520 of 2008, the present civil revision petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners as well as the respondent and perused the materials on record.

8. The respondent filed suit for permanent injunction. The said suit was decreed on 06.01.1989. According to the respondent, the suit summons were served on the petitioners as per the procedure and they deliberately remained exparte. According to the petitioners, suit summons were not served on them and they came to know about the exparte decree dated 06.01.1989 only on 23.12.2006. The said contention is unbelievable for the simple

reason that the decree was passed for permanent injunction and the petitioners claim that they came to know about the decree only on 23.12.2006 after 17 years of the decree. But they have not disputed and denied subsequent to the exparte decree, number of proceedings were initiated by the respondent and decrees were passed against the petitioners.

9. In view of the above reason, the application filed after 17 years is devoid of merits. The petitioner has not given any acceptable reason for condonation of delay. The learned Judge has considered all the aspects in proper perspective and dismissed the application by giving cogent and valid reasons. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 03.09.2009.

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

17.07.2017

kj
Index:Yes/No

V.M.VELUMANI,J.

Kj

To

The Principal District Munsif, Cuddalore.



C.R.P.(NPD)No.3507 of 2009
and M.P.No.1 of 2009

WEB COPY 17.07.2017