



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.581 of 2015

A.George

... Appellant

vs

1. K.Seethalakshmi

2. The Nagercoil Municipality,
Represented by its Commissioner,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondents

Prayer: Appeal filed under Order 43 Rule (1) (c) of C.P.C to allow the civil miscellaneous appeal by setting aside the order passed in I.A.No.113 of 2014 in A.S.No.22 of 2003 dated 30.01.2015 on the file of the Principal Sub Court, Nagercoil.

For Appellant : Mr.R.Manimaran
For Respondents : Mr.M.P.Senthil for R1
Mr.P.Athimoola Pandian for R2

JUDGMENT

Heard the learned counsel on either side.

2.Nagercoil Municipality filed O.S.No.691 of 1997 on the file of the District Munsif Court, Nagercoil, seeking relief of permanent injunction and mandatory injunction against the defendant/first respondent herein viz., K.Seethalakshmi. The appellant herein viz., George was impleaded as second defendant in the suit. No relief was claimed against the appellant herein. The second respondent remained exparte in the said suit. He did not file written statement therein. But the suit came to be decreed on 31.12.2002.

3.Aggrrieved by the decreeing of the suit, the first defendant filed A.S.No.22 of 2003 before the Principal Sub Court, Nagercoil. The appeal came to be allowed on 26.03.2004. While so, the appellant herein filed I.A.No.113 of 2014 for setting aside the judgment and decree in A.S.No.22 of 2003.

4.His contention was that even though the first defendant



Seethalakshmi filed batta in the first appeal, no notice was served on him. Therefore, he sought to set aside the decree allowing the said first appeal.

5. The First Appellate Court noted that the said I.A. deserves to be dismissed on the ground that the rights of the second defendant were not infringed in any manner. He had no locus standi to maintain the said I.A. He was shown as a party. The fact is that he remained exparte. He did not file written statement. In that view of the matter, the dispute was essentially between the Nagercoil Municipality and Seethalakshmi. The said I.A. came to be dismissed on 30.01.2015.

6. The reasons assigned by the First Appellate Court for dismissing the said I.A. filed by the appellant herein are sound. This Court is not in a position to take a different view. I see no merit in this appeal. It stands dismissed. No costs.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Nagercoil.
2. The District Munsif, Nagercoil.
3. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.R.MANIMARAN, ADVOCATE IN SR No. 84605
+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 84296

TSG
TE/MR-KKR/SAR-III : 14/11/2017 : 2P/6C

JUDGMENT MADE IN
C.M.A. (MD) No.581 of 2015
30.10.2017