



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(MD)No.645 of 2016 (PD)

and

C.M.P(MD) No.2968 of 2016

K.V.Ananth

... Revision Petitioner/Petitioner/Defendant

Vs.

1.Rajkumar

2.Selvam

3.Rajalakshmi

4.Prema

5.Vijaya

... Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 03.09.2015 made in I.A.No.272 of 2015 in O.S.No.49 of 2011 on the file of the learned Principal District Munsif cum Judicial Magistrate, Nanguneri.

For Petitioner	: Mr.K.Murugesan
For Respondents	: No Appearance

ORDER

This Civil Revision Petition has been filed challenging the fair and decreetal order dated 03.09.2015 passed in I.A.No.272 of 2015 in O.S.No.49 of 2011 on the file of the learned Principal District Munsif cum Judicial Magistrate, Nanguneri.

2. The petitioner is the defendant in the suit and the respondents/plaintiffs has filed a suit for declaration and permanent injunction. The main suit was posted for filing written statement. At the time, the petitioner was suffering from jaundice and hence, he could not instruct his counsel on time and as such he was set exparte and the failure on his part to file the written statement is neither wilful nor wanton and hence, he prays to set aside the exparte order dated 24.02.2015 and the same was dismissed by the Trial Court, aggrieved by which, this civil revision petition has been filed by the petitioner.

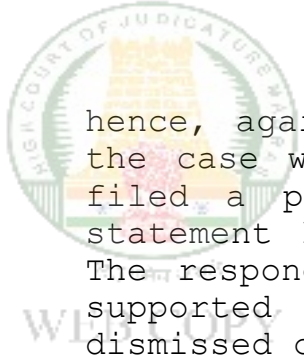
<https://hcservices.ecourts.gov.in/hcservices/> and the learned Counsel for the petitioner and perused the materials available on record.



4. The learned Counsel for the petitioner submitted that the petitioner is the defendant in the suit and the respondents/plaintiffs have filed a suit for declaration and permanent injunction. The alleged case of the respondents before the Court below is that the matter of the suit is a Punja land situated at Survey No.690/1B, Karanthaneri Village, Nanguneri Taluk, Tirunelveli District was allotted to the father of the respondents namely Krishnamoorhi Reddiar through a family arrangement and he obtained patta No.786 and it was renumbered as 183. He expired on 19.01.2005 and on his demise the said property devolved on the mother of the respondents and the respondents. On 19.08.2010 the mother of the respondents also expired and hence the property devolved on the respondents and they are in possession and enjoyment of the said property. On 21.02.2011 the respondents applied for encumbrance certificate and came to understand that the petitioner purchased the property from one Vimala W/o.Late.Krishnan @ Krishnamoorthi Reddiar on 05.10.2010 and the said Late.Krishnan @ Krishnamoorthi Reddiar is not the actual Krishnamoorthi Reddiar, whose name was entered in Patta No.183 and the petitioner disturbed their possession on 01.03.2011. Legal notice was issued on 04.03.2011 and the same was received on 07.03.2011 and since there was no reply from the petitioner, the suit was filed.

5. The learned Counsel for the petitioner would further submit that the real factual matrix is that the said property was acquired by the said Late.Krishnan @ Krishnamoorthi Reddiar by inheritance and a piece of the property was purchased by him through registered sale deed bearing No.2508 of 1960 on the file of the Sub Registrar Office, Nanguneri, Tirunelveli and on his demise the entire property devolved on his wife, ie., petitioner's predecessor in title and she was in peaceful possession and enjoyment without any interruption. Subsequently, the petitioner purchased the same on 05.08.2010 through a registered sale deed.

6. According to the petitioner, the alleged case of the respondents is not true, since the grandfather's name of the respondents is S.M.Ramasami Reddiar, wherein the name found in the registered sale deed is Nambi Reddiar/ the ancestor of petitioner's predecessor. He would further submit that the respondents have filed the suit with an intention to grab money from the petitioner and on receipt of notice, the petitioner entered into appearance and due to petitioner's inability, he did not appeared before the Trial Court and unable to file the written statement in time and hence, exparte dismissal order was passed. Thereafter, the respondents preferred an appeal in A.S.No.7 of 2013 on the file of the Sub Court, Valliyoor, where the petitioner entered appearance and on considering the facts and circumstances, the learned first Appellate Court remanded the suit to the learned Trial Judge on 01.11.2014 to try the suit afresh. Subsequently, the suit was taken up for trial and again the petitioner entered appearance and later due to ill-health, he was not able to file his written statement in time and



hence, again there was an exparte order against the petitioner and the case was adjourned for judgment. Immediately, the petitioner filed a petition under Order 9 Rule 7 along with the written statement before the learned Trial Judge, in I.A.No.272 of 2015. The respondents resisted the same, as if the application was not supported with medical records and the said application was dismissed on 03.09.2015.

7. It is seen from the records that the order passed by the learned Trial Judge is cryptic order, without giving any reason.

8. In the above circumstances of the case, though notice has been sent to the respondents, it has been returned stating that "In sufficient address". The learned Counsel for the petitioner has also served notice to the lower Court Counsel, even then also the respondents did not appear before this Court. In my considered opinion, the order passed by the learned Trial Judge is liable to be set aside.

9. In the result, this Civil Revision Petition is allowed and the order dated 03.09.2015 made in I.A.No.272 of 2015 in O.S.No.49 of 2011 is set aside. The petitioner/defendant is directed to file his written statement along with the copy of this order within a period of one week from the date of receipt of copy of this order, before the learned Principal District Munsif cum Judicial Magistrate, Nanguneri, who in turn, is directed to dispose of the suit on merits and in accordance with law, within a period of six months thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif cum Judicial Magistrate,
Nanguneri.

+1cc to M/S.K.MURUGESAN, Advocate SR.No.49418.

C.R.P (MD) No.645 of 2016 (PD)
14.02.2018