



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2018

CORAM

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

C.R.P. (MD)No.695 of 2013

and

M.P. (MD)No.2 of 2013

1.S.Karthikeyan

2.K.Sathiya

... Petitioners/Defendants

Vs.

S.Sudha

... Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for records and set aside the order dated 15.03.2013 passed in the application in I.A.No.261 of 2013 in O.S.No.255 of 2013 by the Principal Subordinate Judge, Madurai and allow the same.

For Petitioners : Mr. J.Barthan

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed by the petitioners / defendants as against the order dated 15.03.2013 passed in I.A.No.261 of 2013 in O.S.No.255 of 2013 by the Principal Subordinate Judge, Madurai.

2.The respondent / plaintiff filed the said suit for bare injunction against the petitioners herein.

3.Notice by publication in "Malai Murasu" was effected on 29.08.2017 as per order of this Court in this revision. Service is sufficient for the respondent. Respondent is called absent and set ex-parte.

4.An agreement of sale dated 03.05.2012 was executed between the parties, the plaintiff filed an application in I.A.No.261 of 2013 under Order 2, Rule 2 at the time of filing plaint.

5.The learned counsel appearing for the petitioners submitted that the petitioners have filed a caveat petition in Caveat O.P. No.374 of 2013 before the Court and the same was pending. He further submitted that without issuing notice to the petitioners herein or their counsel and also without giving an opportunity of hearing to the petitioners in that application, the Trial Court has allowed the said application on 15.03.2013 without any speaking order. Against that order, the present Civil Revision Petition is preferred by the petitioners / Defendant Nos.1 & 2.



6.The learned counsel appearing for the petitioners relies a decision of the Hon'ble High Court reported in **2009 (2) CTC 395 (Manimegalai Ramu and another Vs. K.Rashid Khan and another)** held as follows:

"17.Following the above decision of this Court, I am to necessarily hold that if an Application is moved by the applicant seeking a relief under Order 2, Rule 2 C.P.C., it is the duty of the applicant to serve the copies of Application along with documents on the Caveators and it cannot be said that Application filed under Order 2, Rule 2, C.P.C. is a matter between the Court and the applicant alone."

7.The petition filed under Order 2, Rule 2 was ordered during the pendency of the Caveat O.P. filed by the petitioners herein and the same was allowed without hearing the petitioners. Hence, this Civil Revision Petition is allowed setting aside the order passed by the Trial Court in I.A.No.261 of 2013 in O.S.No.255 of 2013, dated 15.03.2013 and the matter is remitted back to the concerned Trial Court for passing speaking order in that application, after hearing the parties concerned. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Principal Subordinate Judge,
Madurai.

+1cc to Mr.T.R.Jeyapalam, Advocate Sr.No.78144

GNS

VB/KAK/SAR1/03.09.2018/2P/3C

C.R.P. (MD) No.695 of 2013
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