

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.912 OF 2013

ORDER:

Heard learned counsel appearing for parties.

Plaintiff in O.S.No.113 of 2006 in the Court of the Junior Civil Judge, Amadalavalasa is revision petitioner. The respondents herein filed I.A.No.383 of 2011 in O.S.No.113 of 2006 to set aside the ex-parte decree passed on 26.08.2011.

The petitioner herein opposed the prayer stating that the petition is not maintainable as several opportunities were given to respondents herein and that after examining PWs.1 to 4, the suit was decreed.

The learned trial Judge through the order impugned in the revision while allowing the prayer held as follows:-

“It is not a decree on contest though it is a decree on merits where the Court had assigned justified reasons for passing a decree in favour of the plaintiff. In every case, whether the defendant had contested the suit or not, it is the duty of the Court to examine the entitlement of the plaintiff for a decree. Even in a case where the defendant does not contest, yet if the evidence adduced by the plaintiff does not entitle him to have a decree, the Court should necessarily deny the relief. Whether the defendant contests the suit or he remained ex-parte, the Court is supposed to pass a decree on merits. Therefore in all cases where a decree is passed on merits more particularly assigning reasons, it does not partake the character of a contested judgment where from only a remedy to have the decree set aside is appeal. Therefore, the instant suit, where the petitioners/defendants did not cross examine either the plaintiff or his witnesses and when the petitioners/defendants suffer a decree, it is a ex-parte decree. Therefore this petition under Order 9 Rule 13 is maintainable.

Considering the reasons assigned by the petitioners/defendants and also keeping in mind the principle

that every suit should be adjudged on merits, I feel that an opportunity can be given to the petitioners/ defendants.”

I have perused the record. The trial Court has rightly allowed the application filed by respondents/defendants. This Court is in agreement with the reasons recorded by the trial Court. No ground warranting interference under Article 227 of the Constitution of India is made out.

The Civil Revision Petition fails and is, accordingly, dismissed. The suit is directed to be disposed of within two months from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, stands closed. There shall be no order as to costs.

Date: 11-10-2018
Prv



S.V.BHATT, J