

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (PD) No.2089 of 2010
M.P.No.1 of 2010

R.Annadurai

... Petitioner

Vs.

1. M.Baskaran (died)
2. The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai-35.
3. Sivakami
4. Selvi
5. Geetha
6. Mohan
7. Sheela
8. Suresh

(Respondents 3 to 8 brought on record as LR's of the deceased first respondent vide court order dated 14.06.2019 made in MP No.2/2014 CRP 2089/2010)

सत्यमेव जयते
... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 16.04.2010 passed in I.A.No.23324 of 2006 in O.S.No.2171 of 2003 by the VI Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.A.Chenchurama Reddy
For Respondents : Mr.V.Andandha Moorthy (for R2)
Mr.I.Arokiaselvaraj (for R3 to R8)

ORDER

The civil revision petitioner is the first respondent in I.A.No.23324 of 2006 in O.S.No.2171 of 2003 on the file of the VI Assistant Judge, City Civil Court, Chennai.

2. The first respondent herein filed the petition in I.A.No.23324/2006 under Order IX Rule 13 of the Code of Civil Procedure to set aside the exparte decree passed against him in O.S.No.2171 of 2003. The learned VI Assistant Judge, City Civil Court, Chennai allowed the said application vide his fair and decreetal order dated 16.04.2010. Aggrieved over the same, the present revision petition is filed.

3. The civil revision petitioner filed the suit in O.S.No.2171 of 2003 against the respondent herein for the following reliefs.

(i) Directing the first defendant/first respondent herein to obtain a sale deed with respect to the schedule mentioned property bearing door No.0-217, MMDA Colony, Arumbakkam, Chennai from the second defendant and thereafter, execute the sale deed with respect to the

schedule mentioned property in favour of the plaintiff, within one month.

(ii) directing the 2nd defendant to execute the sale deed with respect to the schedule mentioned land in favour of the plaintiff, if the first defendant fails to obtain the sale deed in his favour with respect to the schedule mentioned land.

(iii) for a permanent injunction restraining the first defendant, his servants, agents and his men from interfering with the peaceful possession and enjoyment of the schedule mentioned property by the plaintiff.

4. In the suit in O.S.No.2171 of 2003, the revision petitioner/ plaintiff had contended that he entered into an agreement of sale with the first respondent/first defendant on 05.12.1985 in and by which the suit property was agreed to be sold to him for a sale consideration of Rs.35,000/-. According to the civil revision petitioner/plaintiff, the entire amount was paid at the time of execution of the document itself and that he was put in possession of the suit property. It is further averred by him that the first respondent/first defendant did not take up any action on his side to get the sale deed executed in his favour by the Tamil Nadu Housing Board and therefore, he was constrained to file the suit.

5. The first respondent/first defendant was set exparte and the second respondent, The Tamilnadu Housing Board filed its written statement contending that since the first respondent/first defendant did not comply with the terms and conditions of the agreement entered into between him and the 2nd defendant, no sale deed can be executed in favour of the first respondent/first defendant. Subsequently, the suit was decreed on 22.03.2006 and the learned trial judge granted all the reliefs as prayed for by the plaintiff. Thereafter, the first respondent filed an application to set aside the exparte decree passed against them along with an application in I.A.No.7104 of 2007 under Section 5 of the Limitation Act and to condone the delay of 97 days in filing the petition to set aside the exparte decree. The said petition was dismissed by the trial court, against which CRP No.1659 of 2009 was filed by the first respondent/ first defendant before this court. This court condoned the delay of 97 days in filing a petition under Order IX Rule 13 of the Code of Civil Procedure, while exercising its power under Article 227 of the Constitution of India.

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6. Subsequently, the learned VI Assistant Judge, City Civil Court, Chennai allowed the petition under Order IX Rule 13 of the Code of Civil Procedure mainly on the ground that since the first respondent/ first defendant was not served with notice, the exparte decree passed against

him is liable to be set aside.

7. Mr.A.Chenchurama Reddy, learned counsel appearing for the revision petitioner contended that though it is contended that an exparte decree was passed against the first respondent/first defendant on 22.03.2006, it was not an exparte decree, as it was contested by the 2nd defendant. He further contended that subsequent to the passing of the decree, the first respondent/ first defendant executed a registered power of attorney in favour of one S.P.Premkumar and the said Power of Attorney had sold the suit property to one E.Ramasubbu. According to the learned counsel appearing for the revision petitioner, since the first respondent has no subsisting interest in the suit property, he is not entitled to file a petition under Order IX Rule 13 of the Code of Civil Procedure to set aside the exparte decree. He therefore contended that the orders passed by the learned VI Assistant Judge, City Civil Court, Chennai in I.A.No.23324 of 2006 in O.S.No.2171 of 2003 is liable to be set aside.

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8. Per contra, Mr.I.Arokia Selvaraj, learned counsel appearing for the respondents 3 to 8 contended that this court while exercising its power under Article 227 of the Constitution of India, condoned the delay of 97 days in filing the petition under Order IX Rule 13 of the Code of Civil

Procedure and it was clearly observed by this court that the defendant was not served with summons in the suit in O.S.No.2171 of 2003. His further contention is that the learned VI Assistant Judge, City Civil Court, Chennai had rightly observed that when the defendant is not served with summons, the exparte decree passed against him should be set aside. He would therefore contend that the civil revision petition is liable to dismissed.

9. It is pertinent to point out that the petition in I.A.No.7104 of 2007 filed under Section 5 of the Limitation Act to condone the delay of 97 days in filing the petition under Order IX Rule 13 of the Code of Civil Procedure was dismissed by the VI Assistant Judge, City Civil Court, Chennai on 10.04.2008. In the civil revision petition in CRP No.1659 of 2009, this court had condoned the delay of 97 days in filing the petition under Order IX Rule 13 of the Code of Civil Procedure while exercising its power under Article 227 of the Constitution of India.

10. Therefore, the only point which has to be decided in the petition under Order IX Rule 13 of the Code of Civil Procedure is that whether the defendant was served with summons or that he has shown sufficient cause for his failure to appear when the suit was called for appearance.

11. In the instant case, it is clear from the records that the defendant was not served with summons in the suit in O.S.No.2171 of 2003. In the circumstances, the orders passed by the trial court cannot be found fault with. The contention of the learned counsel appearing for the revision petitioner is that since the property was sold to a third party through a sale deed dated 21.05.2008 registered as document No.1815/2008, the first respondent/ first defendant has no subsisting interest in the suit property which would entitle him to maintain an application to set aside the exparte decree. The subsequent assignment of the property will not take away the right given to the first respondent/ first defendant in filing an application to set aside the exparte decree or to condone the delay in filing the said application. Further more, it shall be pertinent to note that even after passing of exparte decree, the defendant can file an application under Order IX Rule 13 of the Code of Civil Procedure to set aside the exparte decree besides having a right to file an appeal against the exparte decree without seeking an order of setting aside the exparte decree. The fact that summons was not duly served is a valid reason to set aside the exparte decree. Refusing to set aside the exparte decree can result in meritorious matter being thrown out at the very threshold level and would result in miscarriage of justice. The learned VI Assistant Judge, City Civil Court, Chennai has given cogent reasons for allowing the petition under Order IX

Rule 13 of the Code of Civil Procedure and I do not see any reason to interfere with the findings recorded by the trial court.

12. In the result,

(i) The civil revision petition is dismissed. No costs. The connected miscellaneous petition is closed.

(ii) The the orders dated 16.04.2010 passed in I.A.No.23324 of 2006 in O.S.No.2171 of 2003 by the VI Assistant Judge, City Civil Court, Chennai is upheld.

24.07.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst

To

The VI Assistant Judge, City Civil Court, Chennai.

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R.HEMALATHA,J.
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