

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2813 of 2014

and

M.P.No.1 of 2014

1. Mayavan
2. Malayappan
3. Elayaperumal
4. Padmapriya
5. Thaipriya

.... Appellants

Vs.

Mani

... Respondent

Civil Miscellaneous Appeal is filed under Section 104 of the Civil Procedure Code, to set aside the order passed in I.A.No.100 of 2013 in O.S.No.95 of 2011 dated 04.09.2013 on the file of the Learned II Additional District Judge, Pondicherry

For Appellants : Mr.M.Devaraj

For Respondent : Mr.T.S.Baskaran

Judgment

This Civil Miscellaneous Appeal has been filed against the order dated 04.09.2013 made in I.A.No.100 of 2013 in O.S.No.95 of 2011 on the file of the Learned II Additional District Judge, Pondicherry.

2. The appellants 1 to 3 are the brothers of the respondent, the fourth appellant is the wife of the first appellant and the fifth appellant is the wife of the second appellant.

3. The case of the appellants is that the respondent filed a suit for partition in O.S.No.95 of 2011 against the appellants and the same was decreed exparte on 10.09.2012. Subsequently, the appellants filed an Interlocutory Application in I.A.No.100 of 2013 in O.S.No.95 of 2011 before the Learned II Additional

District Judge, Pondicherry stating that they engaged an Advocate to contest the suit and the case was posted for filing their written settlement. In the meanwhile, they tried to settle the matter amicably with the help of the local panchayat and the panchayathars also assured that they will settle the issues. Hence, believing their words, they have not filed their written statement and have not appeared before the Court. But the Court passed an exparte decree in favour of the respondent on 10.09.2012. Their non-appearance was neither willful nor wanton but due to the above said bonafide reason, and sought for setting aside the exparte order.

4. Denying the allegations of the appellants, the respondent has contended that the appellants had entered appearance through their counsel and the matter was posted for several times for filing their written statement, but they have not filed any written statement and they were deliberately dragging the suit, then finally, the suit was decreed exparte on 10.09.2012. Further, the respondent has contended that since already a preliminary decree was passed in the suit on 10.09.2012 and the final decree proceedings were going on, the appellants might participate in the final decree proceedings by filing their counter, and sought for dismissal of the set aside application filed by the appellants.

5. The Learned II Additional District Judge, Pondicherry, after perusing the materials on record has observed that the panchayatars who assured the appellants to settle the matter have failed to appear before the Court on 10.09.2012 and further, the appellants were already issued summons in the final decree proceedings and they had entered appearance through their counsel and got time to file counter. After taking part in the final decree proceedings, the appellants filed the application for setting aside the exparte order. Hence, the I.A.No.100 of 2013 is not maintainable, and dismissed the said application. Aggrieved by the same, the appellants have filed this Civil Miscellaneous Appeal before this Court.

6. The learned counsel for the appellants would submit that the suit schedule mentioned properties are the ancestral properties of the appellants 1 to 3 and the respondent through their deceased father viz., Narayanasamy. The respondent had earlier made the father to revoke the settlement deed effected in favour of the ancestors and had purchased the same from the father in a fraudulent manner without including the appellants 1 to 3 for partition.

7. The learned counsel for the respondent would submit that when the respondent was working in the Army, he contributed money to his father for purchasing a property. But his father instead of purchasing the above properties in the name of the respondent, had purchased the same in his own name and therefore, he later sold it to the respondent when the same was requested by the respondent. Hence, the partition cannot be effected in respect of those properties.

8. In support of the case, the learned counsel for the appellants has relied upon the order of the Madurai Bench of this Court reported in 2010 (2) TLNJ 274 (Civil) in the case of P.R.R.Ramasamy Vs. P.R.R.Jeyaraj, wherein, the revision petitioner has filed an application against the order of the Court below, and this Court has found that the revision petitioner had not taken any steps after the summons were issued to him in the final decree proceedings, hence, dismissed the said application by confirming the order of the Court below.

9 The learned counsel for the respondent has also relied upon a Judgment of this Court reported in the case of K.Rajamanickam & R.Sulochana Vs. S.Valli, wherein, the appellants have filed an application against the order of the Court below, and this Court has found that the appellants were always keeping away from the Court with an intention to protract the proceedings by filing an application to set aside the exparte decree, hence, dismissed the said application by confirming the order of the Court below.

10. Heard the learned counsel for the appellants and the learned counsel for the respondent, and perused the materials available on record.

11. On perusal of the records, it is seen that the appellants were not vigilant before the Court below while defending their case, and therefore, the suit has been decreed exparte on 10.09.2012. Further, it is seen that the appellants have filed the application for setting aside the exparte order, but the same was dismissed by the Court below as there was no valid reason in the application for setting aside the same.

12. It is also seen that the appellants have filed the set aside application immediately after the exparte order, but the same was not considered by the Court below while dismissing the said application. However, the final decree proceedings are pending before the Court below, hence this Court is of the view that this appeal may be disposed of by giving a liberty to the appellants to file a counter before the Court below in the final decree proceedings in order to prove their case that they are entitled to be included in the suit properties for partition.

13. Accordingly, this Civil Miscellaneous Appeal is disposed of with a liberty to the appellants to file a counter before the Court below in the final decree proceedings by letting an evidence. As the suit is of the year 2011, the Learned II Additional District Judge, Pondicherry, is directed to dispose of the case within a period of six months from the date of receipt of a copy of this Judgment after giving sufficient opportunity to the parties concerned. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Presiding Officer,
II Additional District Court,
Pondicherry.

2. The Section Officer,
VR Section,
High Court, Madras.

+ 1 CC to Mr. M.Devaraj, Advocate, Sr95726

+1 CC to Mr. T.S.Baskaran, Advocate, Sr 95756

सत्यमेव जयते

C.M.A.No.2813 of 2014
and

M.P.No.1 of 2014

PP CO

MRP 28/05/2020

WEB COPY