

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 06.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.R.P (MD) .Nos.1038 and 1039 of 2019****and****C.M.P. (MD) .No.5729 of 2019 in C.R.P. (MD) .No.1038/2019**

S.Manickam ... Petitioner in both the petitions/
Respondent/Plaintiff
Vs.

K.Vadamalaimuthu ...Respondent in C.R.P. (MD)No.1038/2019/
Petitioner / Defendant

V.Saravanan ...Respondent in C.R.P. (MD)No.1039 of 2019/
Petitioner / Son of the defendant

COMMON PRAYER:- Civil Revision Petitions filed under Article 227 of the Constitution of India, against the order dated 19.02.2019 passed in I.A.Nos.2044 of 2017 and 1839 of 2018 respectively in O.S.No.58 of 2017 by the District Munsif Court, Melur.

For petitioner in
both the petitions : Mr.M.Govindarajan

COMMON ORDER

C.R.P. (MD) .No.1038 of 2019 has been filed by the petitioner/plaintiff challenging the order dated 19.02.2019 passed in I.A.No.2044 of 2017 in O.S.No.58 of 2017, whereby and whereunder the Court below has allowed the petition filed by the respondent/defendant seeking to set aside the *ex parte* order dated 29.11.2017.

2.C.R.P. (MD) .No.1039 of 2019 has been filed by the petitioner/plaintiff challenging the order dated 19.02.2019 passed in I.A.No.1839 of 2018 in O.S.No.58 of 2017, whereby and whereunder the Court below has allowed the petition filed by the respondent/son of the sole defendant, seeking permission to file the petition for setting aside the *ex parte* order dated 29.11.2017 on behalf of his father/sole defendant.

3. The petitioner herein as plaintiff has filed the suit in O.S.No.58 of 2017 for permanent injunction against the sole defendant by name Vadamalaimuthu. Since the sole defendant failed to file written statement, he was set *ex parte* on 29.11.2017. Seeking to set aside the said *ex parte* order, the son of the sole defendant by name V.Saravanan filed I.A.No.2044 of 2017. Thereafter, the son of the sole defendant filed I.A.No.1389 of 2018 seeking permission to file the petition for setting aside the *ex parte* order dated

29.11.2017 on behalf of his father/sole defendant, who is working in abroad. The trial Court, after hearing both sides, has allowed both the applications on the same day. Questioning the same, the petitioner/plaintiff has filed these revision petitions.

4. Heard the learned counsel for the petitioner and perused the records carefully.

5. The main contention of the petitioner is that the petition seeking to set aside the *ex parte* order has been filed by the son of the sole defendant before seeking permission to file such petition on behalf of the sole defendant and therefore, the Court below, after allowing the petition seeking permission, ought to have directed the son of the defendant to file a fresh petition to set aside the *ex parte* order. Admittedly, in this case, the son of the defendant has initially filed petition seeking to set aside the *ex parte* order petition and the same was mistakenly numbered. Subsequently, the son of the defendant filed a petition seeking permission to file a petition for setting aside the *ex parte* order. However, the fact remains that the Court below has allowed the petition seeking permission first and then allowed the petition for setting aside the *ex parte* order on the same day. Sticking on technicalities would only lead to delay. This Court does not find any reason to interfere with the orders passed by the Court below.

6. At this juncture, the learned counsel for the petitioner submitted that the suit has been filed in the year 2017 and that the petitioner/plaintiff is an aged person and hence, this Court may direct the Court below to dispose of the suit in O.S.No.58 of 2017 within a stipulated time.

7. In view of the above, these Civil Revision Petitions are dismissed. However, considering the year of the suit, age of the petitioner/plaintiff and stage of the suit, the Court below is directed to conduct trial and dispose of the suit in O.S.No.58 of 2017 within a period of six months from the date of receipt of a copy of this order. Both the parties shall cooperate the Court below for early disposal of the case. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
<https://hcservices.ecourts.gov.in/hcservices/>

1. The District Munsif Court,
Melur.



+1 CC to Mr.S.RAMU, Advocate (SR-80063[F] dated 06/08/2019)

C.R.P (MD) .Nos.1038 and 1039 of 2019
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