

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(NPD).No.453 of 2006

and

M.P.No.3384 of 2006

1.Sabu Saheb
2.Pyaru Saheb
3.Baba Saheb
4.Alla Baksh

... Petitioners/ defendants

Versus

Useenbee

... Respondent/Plaintiff

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the judgment and decree in O.S.No.205 of 1999 on the file of the learned District Munsif cum Judicial Magistrate, Denkanikottai, dated 08.04.2004.

For Petitioners : Mr.V.Raghavachar

For Respondent : Mr.W.M.Abdul Majeed

O R D E R

The Civil Revision petition has been filed against the order passed in O.S.No.205 of 1999, by the learned District Munsif cum Judicial Magistrate, Denkanikottai, dated 08.04.2004.

2 The respondent herein is the plaintiff in the suit O.S.No.205 of 1999.

3 The revision petitioner has filed a suit in O.S.No.205 of 1999, for partition and preliminary decree was ordered based upon the evidence of PW1. As against that, the petitioners herein have filed an I.A to set aside the ex-parte decree and the same was returned on saying that it is "after full trial" disposal and hence, the petitioners have preferred this revision contending that the Trial Court has committed an error in treating the suit under Order IX Rule XVII when the plaintiff was not even subjected to cross examination.

4 The report of learned Principal District Judge, Krishnagiri, reveals that the suit in O.S.No.205 of 1999 was filed on 18.11.1999 and the suit was dismissed for default on 11.06.2001 and restored to file on 04.10.2002, subsequently, ex-parte decree was passed on 10.10.2002. Thereafter, petitions to set aside ex-parte decree under Order IX Rule

XIII along with the petition under Section 5 of the Limitation Act, was filed and taken on file on 22.03.2003 and Section 5 of the Limitation Act application in I.A.No.181 of 2003 was allowed on 22.04.2003 and petition to set aside the ex-parte decree was allowed in I.A.No.461 of 2003 on 09.09.2003. Thereby, the original ex-parte decree, dated 10.10.2002 was set aside on 09.09.2003.

5 The defendants 1 to 4 appeared through the learned counsel, contested the case and subsequently, after full fledged trial, the suit was disposed of on 08.04.2004.

6 As stated supra, originally, the respondent/plaintiff has filed proof affidavit and after the ex-parte decree was set aside, again filed proof affidavit on 08.10.2007. Again after setting aside the ex-parte decree, he has filed proof affidavit on 01.04.2004 and on that day, the learned District Munsif, has made a docket order stating that the plaintiff present and filed proof affidavit, Ex.A1 was marked. Though, the counsel for the defendants were present, they did not prefer to cross examine PW1. The defendants were called absent and taking into consideration the cross examination of PW1 is closed, treated the suit under Order XVII Rule III and the petitioner side evidence is closed and based upon unchallenged version of PW1, the decreed suit dated 08.04.2004 was put under challenge.

7 Since the petitioners/defendants have been given multiple opportunities, in spite of the ex-parte decree on two occasions and also taking note of the fact that subsequently, the petition to condone the delay was set aside was allowed and set aside the ex-parte and again when the posted for fresh evidence. The learned counsel for the defendants was present, has not chosen to cross-examine PW1, the defendants were not present on that day.

8 On a perusal of the order passed by the learned District Munsif on 08.04.2004, though the defendant has not chosen to cross-examine PW1, he has treated the affidavit and rendered judgment on merits and thereafter, when an application has filed to set aside the ex-parte decree under Order 9 Rule 13 of CPC, it appears that the Registry has returned the application on the premise that the order was passed on merit after full trial and hence, the present Civil Revision Petition by the defendant.

9 On a perusal of the reports from the Lower Court, it is seen that earlier there was an ex-parte decree and an application to set aside the ex-parte with a condone delay petition and the same has been allowed. Thereafter, the case was posted for trial and though he was present he has not chosen to cross-examine and the present order has become final at this distance.

10 This Court does not want to express its view except to say that the order passed by the learned District Munsif, is not in accordance with the order 9 Rule 13 of CPC in the absence of cross examination by the defendant. Since already application has been filed, which was said to have been returned on the premise that it is a decree on merits, and hence, this Court is of the considered view that the judgment in challenge if at all can be treated only as an ex-parte decree. Hence, in view of the passage of the time, the decree dated 08.04.2004, is set aside and the learned District Munsif Court, shall taken on file and the defendant is directed to cross examine PW1 and the Trial Court is required to dispose of the suit within a period of twelve weeks from the date of receipt of a copy of this order. The Registry is directed to send the order copy with in a period of two weeks from today.

11 In the result, the Civil Reivision Petition is allowed to the limited extent with the above directions and the order passed in O.S.No.205 of 1999 by the learned District Munsif cum Judicial Magistrate, Denkanikottai, dated 08.04.2004 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dua

To

The District Munsif cum Judicial Magistrate, Denkanikottai.

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and

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A.SK(24/01/2020)

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