

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 06TH DAY OF MARCH 2020

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.283 of 2020
in
C.S. No.661 of 2015

1. MRS.GOWRIBAI (DECEASED)

W/o. Ravi, No.1, Devaki Ammal Street,
Shenoy Nagar, Chennai-600030.

2. MRS.SHANTHI

W/o.Shanmugam, No.19,
(Old No.10), Old Firewood Depot Street,
Triplicane, Chennai-600005.

3. MRS.VITTABAI

W/o. Vanchi,
No.19, (Old No.10),
Old Firewood Depot Street,
Triplicane,
Chennai-600005.

सत्यमेव जयते .Plaintiffs

-VS-

1. A.K.BALAKRISHNAN PILLAI (DECEASED)

S/o. A.C.Kannanpillai,
No.12, Convent Street,
Shenoy Nagar, Chennai-600030.

(PLAINTIFFS 2 and 3 and DEFENDANTS D2 and 3 are recorded as
LR's of the Deceased 1st Defendant, as per ord.dated 25/03/19,
A.772/19)

2. MRS THIRILOCHANA KUMARI

No.12, Convent Street,
Shenoy Nagar, Chennai-600030.

3. MR.JANARATHAN

S/o. Balakrishna Pillai,

No.3/4, 1st Main Road, Med Plus Medicals Backside,
Jai Nagar, Arumbakkam, Chennai-600106.

4. Mr.A.RAVI

S/o.Rajagopal Pillai,

No.1, Devaki Ammal Street,
Shenoy Nagar, Chennai-600 030

(D4 is brought on record as LR of the Decd.1st Plaintiff as per
ord.dt.25/03/19, A.No.770/19)

A.No.283 of 2020:

1. A.K.BALAKRISHNAN PILLAI (DECEASED)

S/o. A.C.Kannanpillai,

No.12, Convent Street,
Shenoy Nagar, Chennai-600030.

(PLAINTIFFS 2 and 3 and DEFENDANTS D2 and 3 are recorded as
LR's of the Deceased 1st Defendant, as per ord.dated 25/03/19,
A.772/19)

2. MRS.THIRILOCHANA KUMARI

No.12, Convent Street,

Shenoy Nagar, Chennai-600030.

3. MR.JANARATHAN

S/o. Balakrishna Pillai,

No.3/4, 1st Main Road, Med Plus Medicals Backside,
Jai Nagar, Arumbakkam,
Chennai-600106.

..Applicants 1 and 2 /Defendants 2 and 3

-vs-

MRS.GOWRIBAI (DECEASED)

W/o. Ravi, No.1, Devaki Ammal Street,

Shenoy Nagar, Chennai-600030.

1. MRS.SHANTHI
W/o.Shanmugam, No.19,
(Old No.10), Old Firewood Depot Street,
Triplicane, Chennai-600005.

2. MRS.VITTABAI
W/o. Vanchi,
No.19, (Old No.10),
Old Firewood Depot Street,
Triplicane,
Chennai-600005. ..Plaintiffs

3. Mr.A.RAVI
S/o.Rajagopal Pillai,
No.1, Devaki Ammal Street,
Shenoy Nagar, Chennai-600 030

(D4 is brought on record as LR of the Deceased 1st Plaintiff as per
ord.dt.25/03/19, A.No.770/19)

Application praying that this Hon'ble Court be pleased to Set aside
the exparte order dated 02/08/2019 passed in the above suit.

This application coming on this day before this court for hearing
the court made the following order:

This application is filed by the applicants/defendants 2 and 3 to set
aside the ex-parte order dated 02.08.2019.

2. I heard the learned counsel for the applicants/defendant 2 and 3
and the learned counsel for the respondents 1 and 2/plaintiffs.

3. The learned counsel for the applicants submitted that the
applicants' father/first defendant had entered appearance and filed an

application to reject the plaint. During the pendency of the application, the applicants' father passed away and therefore the applicants were impleaded as defendants 2 and 3 in the suit. In these circumstances, it is submitted that the written statement could not be filed and the applicants were set ex-parte for not filing the written statement. Therefore, the present application is filed.

4. The learned counsel for the respondents 1 and 2/plaintiffs submits that the applicants were given sufficient opportunity to file the written statement and did not do so for a long period of time. In these circumstances, the order dated 02.08.2019 was passed setting the applicants ex-parte.

5. I considered the submissions of the learned counsel for the respective parties and examined the affidavit filed in support of the application and the counter thereto.

6. From the facts and circumstances set out in the said affidavit, I find that the applicants have made out sufficient cause to set aside the ex-parte order in as much as the applicants father was earlier prosecuting the suit and he passed away during the pendency of the suit. In addition, it appears that an application to reject the plaint was filed and, therefore, the written statement could not be filed during the pendency of the said application.

7. Accordingly, the ex-parte order dated 02.08.2019 is set aside and the present application is allowed.

Post the suit on 13.03.2020.

Sd/.S.K.R.J.
06.03.2020

//Certified to be a true copy//
Dated this the day of 2020.

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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