

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.100 of 2018
and
C.M.P.No.531 of 2018

1. P.Arun Kumar
2. P.Rajesh Kumar

.... Petitioners/Plaintiffs

Vs.

P.Uma Maheswari

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.11.2017 passed in I.A.No.16898 of 2016 in O.S.No.8245 of 2005 on the file of XVI Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.N.C.Thirumalai Balaji

For Respondent : Mr.B.Ullasavelan

ORDER

The plaintiffs in O.S.No.8245 of 2005 have come up with this revision challenging the order of the Trial Court allowing the application in I.A.No.16898 of 2016 filed under Order 9 Rule 13 of C.P.C., seeking to set aside the exparte decree made in the suit on 13.07.2006.

2. The application itself came to be filed on 25.10.2016 with the claim that the respondent herein was not residing at the address shown in the plaint on the date of the suit. The respondent would claim that she was forced to leave her husband's house during November 2004, after the death of her mother-in-law Mrs.Tulasiammal. It is also claimed that she was not served with summons in the suit.

3. It is an admitted fact that the summons in the suit were not served and the petitioners herein had taken substituted service, namely, publication in newspaper. It is also seen that there was several other litigations between the parties. The application for setting aside the exparte decree was resisted on the ground that the respondent was aware of the exparte decree

passed as the same was disclosed in the connected proceedings. The Learned Trial Judge who considered the application found that the plaintiffs themselves have admitted that the respondent herein was not a resident of No.46, Ramanujar Koodam Street, Old Washermenpet, Chennai - 600021 and she left the house on 10.11.2004 after the death of their grand mother. The suit in O.S.No.8245 of 2005 was filed on 14.12.2003, therefore, the plaintiffs were aware of the fact that the defendant was not residing in the address given by them on the day when they sought to file the suit. However, they presented the suit with a wrong address and obtained an exparte decree from the Court without serving proper summons to the defendant.

4. It is also seen that the claim of the petitioners that the respondent was made aware of the exparte decree in the connected proceeding in this court has been rightly rejected by the Trial Court on the ground that specific details were not given and a vague statement has been made to the effect that the cancellation of the settlement deed has been declared to be null and void by the City Civil Court. The number of the suit and date of such exparte decree were not mentioned. The nature of the decree was also not mentioned. In the light of the above, the learned Trial Court Judge has concluded that the respondent herein has made out a sufficient cause for having the exparte decree set aside.

5. Though Mr.N.C.Thirumalai Balaji, learned counsel for the petitioners, would vehemently contend that the respondent was aware of the exparte decree and she had chosen to approach the Court after 10 years of the exparte decree, I am unable to accept his submissions since the records available militate against his claim.

6. The Learned Trial Court Judge has examined the records including the service of summons in the suit and come to the conclusion that the exparte decree has been obtained by intentionally giving false address and effecting publication to that address. I therefore do not find that this is a fit case for interference under Section 115 of the Civil Procedure Code. Accordingly, this Civil Revision fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The XVI Assistant Judge, City Civil Court, Chennai

+1cc to Mr.P.Subba Reddy, Advocate, S.R.No.36563

C.R.P.No.100 of 2018
and
C.M.P.No.531 of 2018

RSI (CO)
RV (09/12/2020)



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