

N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)No. 1615 of 2018
and
C.M.P.No. 8762 of 2018

1.Baby Ammal
2.G.Nithiyanandam
3.G.Babu

..Petitioners

Vs.

1.K.R.Ravi
2.R.Dhanalakshmi

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the order and decreetal order dated 09.01.2018 passed in C.M.A.No. 3 of 2015 on the file of the Principal Sub-Ordinate Judge, Vellore and to confirming the order and decreetal order dated 17.03.2015 passed in I.A.No. 679 of 2014 in O.S.No. 979 of 2009 on the file of the District Munsif, Katpadi, Vellore District.

For Petitioners : Mr.T.Dhanyakumar
For Respondents : Mr.T.M.Hariharan

O R D E R

The defendants in O.S.No. 979 of 2009 whose application to set aside an exparte decree was dismissed by the Trial Court upon its affirmation by the Appellate Court in C.M.A.No. 3 of 2015 have come up with this Civi Revision Petition.

2. The suit was originally filed for declaration and injunction. The plaintiff was examined as P.W.1 sometime in 2012 and since the defendants did not chose to cross-examine him they were set exparte on 29.09.2011. Thereafter, the suit was periodically adjourned till July 2013 for arguments, the plaintiff came up with two other applications for production of additional documents, which were also allowed. Thereafter, the plaintiff came out with an application in I.A.No. 293 of 2013 for amending the plaint including the relief of recovery of possession. The amendment was allowed and according to the

defendants, the plaintiffs did not file the amended copy of the plaint and they were not given opportunity for filing additional written statement and the suit was being adjourned periodically for arguments.

3. On 08.10.2014, an exparte decree came to be passed. Thereafter, on 05.11.2014, the petitioners filed an application in I.A.No. 679 of 2014 seeking to set aside the exparte decree. This was resisted by the plaintiffs contending that the defendants are guilty of dragging on the suit and they have not shown sufficient cause for setting aside the exparte decree. The Trial Court on erroneous view of the meaning of the term 'sufficient cause' occurring in Order 9 Rule 13 of the Code of Civil Procedure 1908 dismissed the application holding that the defendants have not made out sufficient cause for setting aside the exparte decree. Aggrieved, the defendants preferred an appeal in C.M.A.No.3 of 2015. The lower Appellate Court also fell in error and dismissed the appeal. Aggrieved, the defendants came up with this revision.

4. I have heard Mr.T.Dhanyakumar, learned counsel appearing for the petitioner. Mr. T.M.Hariharan, learned counsel appearing for the respondent.

5. Mr.T.Dhanyakumar, learned counsel appearing for the petitioner would vehemently contend that the Courts below were not right in attributing the entire delay to the petitioners. Admittedly, P.W.1 was examined in 2011 and the defendants were set exparte in 2011. From 2011 to 2013, the plaintiff did not prosecute the suit and filed applications for production of additional document. In 2013, the plaintiff preferred an application in I.A.No. 293 of 2013 seeking to amend the plaint. After the amendment of the plaint, the defendants were not given a opportunity to file additional written statement since they were set exparte 2011. This, in my opinion is incorrect. A defendant who was set exparte is entitled to participate in the subsequent stages of the same litigation. The Trial Court also did not advert to that fact that the suit was held up mainly because of the applications filed by the plaintiff and the delay was not solely due to the defendants. In the application to set aside exparte decree filed in time and the reason assigned is that the first petitioner / first defendant fell ill and hence, the other defendants being her sons could not attend Court on that particular date, when the exparte decree came to be passed. This, in my opinion would amount to 'sufficient cause' more so, when the same was not clearly denied in the counter affidavit. The Court below therefore, fell in error in dismissing the application for setting aside the exparte decree. I have no doubt in my mind, if the exparte is allowed to stand it will be occasion failure of the justice. Hence, this Civil

Revision Petition is allowed, the orders of the Courts below are set aside, I.A.No. 679 of 2014 is allowed, the exparte decree is set aside.

6. The defendants shall file the additional written statement if any on or before 30.09.2020. Upon such filing of additional written statement, the trial Court shall proceed with the suit on a priority basis and dispose of the suit within 6 months from the date of commencement of normal physical hearings in the Courts at Vellore.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To:-

1. The Principal Sub-Ordinate Judge,
Katpadi, Vellore.
2. The District Munsif Court,
Katpadi, Vellore.

+1cc to Mr.T.M.Hariharan, Advocate in Sr.26609

C.R.P(NPD)No. 1615 of 2018
and
C.M.P.No. 8762 of 2018

KS(CO)
RV(18/09/2020)

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