

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2020

CORAM :

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R. SURESH KUMAR

O.S.A.No.119 of 2020 &
CMP.5605 of 2020

A. Azizul Karim

.. Appellant

-vs-

1. P.S.Kirubakaran
2. P.S.Anandan

.. Respondents

Original Side Appeal file dunder Order XXXVI, Rule 1 of O.S.Rules and Clause 15 of the Letter Patent against the order and decree dated 10.02.2020 in Application No.8992 of 2019 in C.S.No.212 of 2017 passed by the learned Single Judge of this Court .

For Appellant : Mr.N. Suresh

ORDER

[Order of the Court was made by DR.VINEET KOTHARI,J.]

Heard the learned counsel appearing for the appellant.

2. By the impugned order dated 10.2.2020, the learned Single Judge had set aside the exparte decree and directed the defendants to file the written statement. The operative portion of the order is quoted below for ready reference.

'4. I considered the submissions of the learned counsel for the respective parties and examined the relevant documents. Upon such consideration, I find that the death certificate of the 4th defendant evidences that the 4th defendant died on 12.07.2018. Likewise, the death certificate of the 5th defendant evidences that he died on 30.01.2020 and the death certificate of the 8th defendant evidences that she died on 29.12.1989. Therefore, the judgment and decree dated 30.07.2018 was clearly obtained against three dead persons. In addition, as correctly pointed out by the learned counsel for the applicants, the address provided in the plaint is a

common address for all 8 defendants. This address clearly does not match the address of the 6th defendant as specified in O.S.No.1385 of 2019. In addition, the learned counsel pointed out that the address is actually that of a Tasmac Wine Shop. This contention has not been refuted by the learned counsel for the respondent/plaintiff. In fact, in spite of providing several opportunities to file a counter affidavit, the respondent/plaintiff has chosen not to file a counter affidavit on one pretext or the other. The learned counsel for the applicants also submitted that the sale agreement dated 02.06.2014 is a forged instrument, which also reflects this wrong address. However, the validity of the said contention should be tested in the suit. Nevertheless, on the basis of the submissions made and the documents perused by me, I have no doubt that the applicants have made out a case to set aside the ex parte judgment and decree. Accordingly, this application is allowed and the ex parte judgment and decree dated 30.07.2018 in C.S.No.212 of 2017 is hereby set aside. The 6th and 7th defendants are directed to file the written statement within four weeks from the date of receipt of a copy of this order.

5. A.D.No.156645 of 2019 was listed under the caption "for maintainability". In the office note on maintainability, it was stated that an ex parte judgment and decree was issued against the applicant and that, therefore, the application is not maintainable. In view of the order passed today, whereby the ex parte judgment and decree has been set aside, the said application is maintainable. Accordingly, the Registry may number and list the said application, if it is otherwise in order. List the suit on 09.03.2020 along with other applications.

3. Learned counsel for the plaintiff/appellant submitted that since the jurisdiction of City Civil Court has been notified, this Court may transfer the trial to the City Civil Court.

4. No such submission appears to have been made before the learned Single Judge, as nothing of this nature has been recorded by the learned Single Judge in the order impugned.

5. As far as setting aside the exparte decree is concerned, we are of the opinion, the learned Single Judge assigned cogent reasons for setting aside the expare decree and judgment, as

the death of the three respondents was not brought on record and the decree had obtained exparte against three persons. Therefore the exparte decree has been rightly set aside by the learned trial court and we do not find any reason to interfere with the findings of the learned Single Judge, as such, the Original Side Appeal is liable to be dismissed and accordingly, it is dismissed. Consequently, connected C.M.P.No.5605 of 2020 is closed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1.The Sub Assistant Registrar
Original Side
High Court, Madras 104.

+1 CC to M/s. Jagadeeswari, Advocate sr 20338.

O.S.A.No.119 of 2020 &
CMP.5605 of 2020

MG(CO)
SP(17/03/2020)



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