

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP NPD. No.572 of 2018
and CMP No. 3081 of 2018

A.Krishnakumar

.. Petitioner

Vs.

Sarojini

W/o. Sivabalakrishnan

Rep. By its Power Agent M.Sivabalakrishnan

S/o. Muthusamy, Lakmanayakanpatti,

Chinnakovilpalayam Village, Kangeyam Taluk.

..Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order dated 15.11.2017 made in I.A.No.809 of 2017 in O.S.No.16 of 2011 on the file of the Sub-court, Udumalpet.

For Petitioner : Mr.D.R.Arun Kumar

For Respondent : No appearance

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision is against an order dismissing the application in IA No.809 of 2017 filed under Order 9 Rule 7 of the Code of Civil Procedure seeking to set aside an *exparte* order. The suit in OS No.16 of 2011 was launched by the sole plaintiff seeking declaration of her title, permanent injunction restraining the defendants from interfering with the peaceful possession, declaring that the Sale Deed dated 07.01.2011 bearing No.150 of 2011 registered in the office of Sub Registrar, Udumalpet is null and void and for the costs of the suit.

2. The second defendant had not filed his written statement and he was set *exparte* on 07.06.2011. The instant application is by the second defendant seeking to set aside the *exparte* order. The first and third defendant had been contesting the suit in the interregnum. The reason given by the second defendant is that he had trusted his counsel and had not followed up the matter. It is stated that he came to know about the *exparte*

order only recently, when he met some other counsel and enquired about the case, since there was no response from his erstwhile counsel.

3. The learned Trial Judge had dismissed the application on the ground the same is barred by limitation.

4. I have heard Mr.D.R.Arun Kumar, learned counsel appearing for the petitioner. The respondent though served is not appearing either in person or through counsel duly instructed.

5. Mr. D.R.Arun Kumar, learned counsel appearing for the petitioner would rely upon a judgment of mine in ***Rajasekar Vs. Govindammal and Ors.***, reported in **2020 (4) LW 481**, to contend that the Trial Court was in error in dismissing the application on the ground it is barred by limitation.

I had held that there is no limitation for filing an application under Order 9 Rule 7 of the Code of Civil Procedure. I have also held that the judgment in ***Visalakshi v. Umapathy***, reported in **2015 (5) CTC 67**, cannot be held to be good law, in view of the pronouncement of the Hon'ble Supreme Court in

Arjun Singh v. Mohindra Kumar and Others, reported in ***AIR 1964 SC 993***.

6. In view of the same, this Revision Petition is **allowed**, the petition in IA No.809 of 2017 will stand allowed, the *ex parte* order is set aside. The learned counsel appearing for the petitioner would submit that the second defendant would adopt the written statement filed by the first defendant his vendor. The said statement is recorded. No costs. Consequently, the connected miscellaneous petition is closed.

27.11.2020

jv
Index:No
Internet:Yes
Speaking order

To

1. The Sub-court,
Udumalpet.
2. The Section Officer,
V.R.Section, High Court of Madras.

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R.SUBRAMANIAN, J.

jv



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