

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2020

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.R.P(NPD)No.4148 of 2013

1.Smt.C.Vasanth
2.Smt.V.Geetha
3.C.Babu
4.C.Boopathy
5.Mrs.C.Dhanalakshmi
6.C.Rajagopal

...Petitioners

Versus

Sri.K.Balakrishna Naidu

...Respondent

This Civil Revision Petition is filed under Section 115 of Civil Procedure Code praying to set aside the fair and decretal order dated 16.02.2012, made in I.A.No.1134 of 2011 in O.S.No.523 of 1994 by the District Munsif Court, Ponneri.

For Petitioners

:

Mr.E.Prabu

For Respondent

:

Vakalat Returned
Private Notice - Not claimed

ORDER

The present Civil Revision Petition has been filed challenging the order dated 16.02.2012 passed by the learned District Munsif, Ponneri in I.A.No.1134 of 2011 in O.S.No.523 of 1994.

2. The petitioners herein are the legal representatives of one Mr.Chittibabu Naidu/defendant. The plaintiff is the respondent herein.

3. The brief facts of the case are as follows:

The respondent/plaintiff filed a suit O.S.No.523 of 1994 against one Mr.Chittibabu/defendant for the following reliefs:

(a) for a declaration of the plaintiff's title to suit item 2 and for the recovery of vacant possession of suit item 2 after removal of all the superstructures thereon;

(b) for recovery of *mesne profit* from this date till the date of recovery of possession of suit item 2;

(c) for a permanent injunction restraining the defendant his men,

servant and agents from proceeding with any new construction or further constructions or plastering or electrification etc., in any portion of suit item 2 and

(d) for costs of the suit.

3.1 When the suit went before the District Munsif Court, Ponneri on 19.10.2004, the defendant was absent and therefore, *ex parte* decree was passed. Against the said *ex parte* decree, the defendant filed an Interlocutory Application in I.A.No.1134 of 2011 for condoning the delay of 1,891 days in filing the petition to set aside the *ex parte* decree dated 19.10.2004. However, by order dated 16.02.2012, the learned District Munsif, Ponneri had dismissed the said condone delay application by stating that the defendant has not assigned sufficient reasons for such enormous delay of 1,891 days in filing the petition to set aside the *ex parte* decree dated 19.10.2004. Subsequently, the defendant died on 16.02.2012. Aggrieved by the order of dismissal, the legal representatives of the deceased defendant i.e., his wife, three sons and two daughters have filed the present Civil Revision Petition before this Court.

4. The learned counsel for the petitioners submitted that the subsequent to the *ex parte* decree dated 19.10.2004, the respondent/plaintiff filed an Execution Petition in E.P.No.39 of 2009. When the said Execution Petition came up for hearing on 24.02.2010, the defendant came to know that the suit was decreed *ex parte*. He further submitted that there is no *malafide* or willful negligence attributable to the defendant in filing the petition to set aside the *ex parte* decree with delay.

4.1 The learned counsel would contend that the *ex parte* judgment and decree passed by the trial Court in O.S.No.523 of 1994 is a non-speaking judgment. In support of his contention, he relied on the judgment passed by the Division Bench of this Court in the case of ***Meenakshisundaram Textiles, Bangalore Vs. Valliammal Textiles Ltd., Tiruppur***. Further, the learned District Munsif, Ponneri had dismissed the condone delay application filed by the defendant without considering the reasons stated by the defendant for the delay. The legal heirs of the deceased defendant have a fair chance to succeed in the case. He therefore

prayed that the impugned order may be set aside.

5. There is no representation for the respondent.

6. Heard the learned counsel for the petitioners and perused the materials available on record.

7. As far as this case is concerned, the petitioners and the respondent are close relatives. The respondent filed a suit O.S.No.523 of 1994 on the file of the District Munsif Court, Ponneri and the same was decreed *ex parte* on 19.10.2004. The said *ex parte* judgment and decree is a non-speaking judgment.

8. At this juncture, it is relevant to extract the judgment, ***Meenakshisundaram Textiles, Bangalore Vs. Valliammal Textiles Ltd., Tiruppur*** reported in ***(2011) 7 MLJ 652***, wherein, the Division Bench of this Court held as follows:

"21. From the above discussions, it is manifestly clear that

even a judgment rendered ex parte and a decree is drawn on the basis of that judgment, it is appealable. In case that judgment and decree become final without there being any appeal, the decree is executable. In that sense, there is no difference between a judgment and decree and an ex parte judgment and decree. In view of the above, in the event the defendant is set ex parte, the Court should be extra careful in such case and it should consider the pleadings and evidence and arrive at a finding as to whether the plaintiff has made out a case for a decree. In this context, it may also be mentioned that though a detailed judgment is required in a contested matter, an ex parte judgment should show the application of the minimum requirement of consideration of the pleadings, issues, evidence and the relief sought for rendering such judgment.

22. If the above law is kept in mind, in our opinion, the judgment and decree dated 08.07.2009 passed by the Court below in O.S.No.16 of 2005 are not in conformity with the provisions of the Code of Civil Procedure and are liable to be set aside. For the same reason, the order and decreetal order dated 26.08.2010 in I.A.No.1776 of 2009 in O.S.No.16 of 2005 passed by the Court below are also liable to be set aside. Accordingly, the order and decreetal order challenged in this appeal are set aside and the suit in O.S.No.16 of 2005 is restored to file. Since the suit is of the year 2005, the learned trial Judge is directed to complete the recording of evidence by the end of April, 2011 and pronounce the judgment before 15.06.2011. Both the learned counsel for the appellant and the respondent have agreed to co-operate with the trial Judge for

pronouncement of the judgment within the stipulated time. The Civil Miscellaneous Appeal is allowed with the aforesaid observations and directions. Consequently, M.P.No.1 of 2010 is closed. No costs."

From a perusal of the above judgment, it is crystal clear that in the event the defendant is set *ex parte*, the Court should be extra careful in such case and it should consider the pleadings and evidence and arrive at a finding as to whether the plaintiff has made out a case for a decree. Further, it is also made clear that though a detailed judgment is required in a contested matter, an *ex parte* judgment should show the application of the minimum requirement of consideration of the pleadings, issues, evidence and the relief sought for rendering such judgment.

9. Considering the facts and circumstances of the case, this Court is of the view that the reasons stated by the defendant for condoning the delay in filing the petition to set aside the *ex parte* decree dated 19.10.2004 is just and proper. However, without considering the said reasons, the trial Court mechanically dismissed the condone Application filed by the defendant in

I.A.No.1134 of 2011 on the ground that the defendant had not explained

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each and every day's delay in filing the petition to set aside the *ex parte* judgment and decree. Hence, the impugned order is liable to be set aside.

10. In the result, this Civil Revision Petition is allowed and the order dated 16.02.2012 passed by the learned District Munsif, Ponneri in I.A.No.1134 of 2011 is set aside. Considering the fact that the suit is of the year 1994, the learned District Munsif, Ponneri is directed to dispose of the suit O.S.No.523 of 1994, as expeditiously as possible, within a period of five months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

To
The District Munsif Court,
Avinashi.

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