

A.No.8992 of 2019
in
C.S.No.212 of 2017
and
A.No.156645 of 2019

SENTHILKUMAR RAMAMOORTHY.J.

This application is filed by the 6th and 7th defendants in C.S.No.212 of 2017 to set aside the ex parte judgment and decree dated 30.07.2018 in C.S.No.212 of 2017.

2. I heard the learned counsel for the applicants/6th and 7th defendants and the learned counsel for the respondent/plaintiff. The learned counsel for the 6th and 7th defendants made three submissions in support of this application. The first submission is that the judgement and decree had been obtained against three persons who were dead on the date of the judgment and the decree. In support of this submission, he referred to the death certificates in respect of the 4th defendant at Page 72 of the typed set of papers; the death certificate of the 8th defendant at Page 1 of the typed set of papers; and the death certificate of the 5th defendant at Page 2 of the typed set of papers. He contended that the said death certificates evidence that the said persons died on 12.07.2018, 29.12.1989 and 30.01.2010, respectively. All these dates are prior to the date of the judgement and decree. The second submission of

the learned counsel is that a wrong address was provided by the respondent/plaintiff as the address for service on the defendants. In this connection, the learned counsel referred to the photograph showing that a Tasmac Wine Shop functions from No.4, Jaffar Strong Street, Mannady, Chennai -1, which is the address shown in the plaint as the address for service on the defendants. He also referred to the plaint in O.S.No.1385 of 2019, which was filed by the respondent/plaintiff against the 6th defendant. In the said suit, the defendant's address is shown as No.86, Nari Murugappan Mudali Street, Pichanoor, Gudiyattam, Vellore District, which is the correct address as per the applicants. The learned counsel also submitted that this address was shown as the address of the respondent/plaintiff in CrI.O.P.No.8127 of 2019 in C.S.No.10020 of 2017 before this Court. In this connection, the learned counsel also pointed out that the counsel who appeared in the CrI.O.P. is the same counsel who appeared before this Court.

3. In response, the learned counsel for the respondent submitted that the suit was filed against 8 defendants, whereas only two defendants are before this Court. With regard to the deaths of the defendants, the learned counsel submitted that the respondent/plaintiff was unaware about the deaths of the said persons. As regards the address, he submitted that the said address was

provided by the defendants in the sale agreement that was executed by the defendants on 2nd June, 2014.

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 30.01.2010 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.

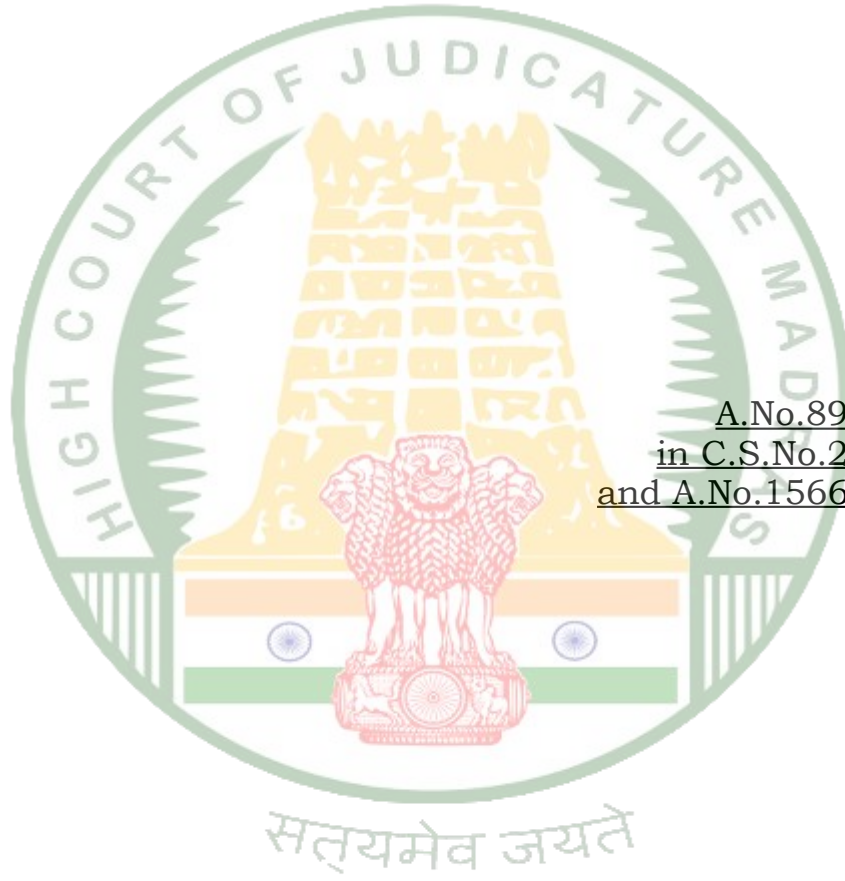
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5. A.D.No.156645 of 2019 was listed under the caption "for maintainability". In the office note on maintainability, it was stated that an ex parte judgment and decree was issued against the applicant and that, therefore, the application is not maintainable. 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.

10.02.2020

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