



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.M.A (MD) No. 607 of 2020

&CMP (MD) No. 6255 of 2020

WEB COPY

1.Muthammal
2.Pathamavathi .. Appellants/Petitioners/Defendants 1 & 2
Vs.
1.M.Manivel .. 1st Respondent/1st Respondent/Plaintiff
2.Chellathal
3.Shanmugam
4.K.Ramasamy Gounder
5.Kandasamy
6.Ramasamy
7.Kaliyathal
8.Karthic Jeyakumar .. 2 to 8 respondent/2 to 8
respondents/3 to 9 defendants

PRAYER: The Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (d) of Civil Procedure Code against the fair and decreetal order dated 20.01.2020 is unnumbered I.A.No. of 2019 in O.S.No.17/2016 on the file of the Additional District Judge, Palani.

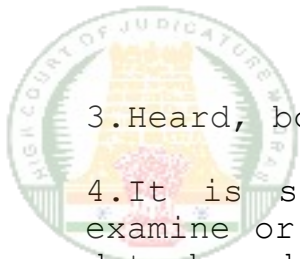
For Petitioners : Mr.H.Lakshmi Shankar
For Respondents : Mr.Anandchandrasekar
for M/S.Sarvabhauman Associates

ORDER

This appeal is preferred by the defendants in O.S.No.17 of 2016 challenging an order passed in unnumbered I.A.No.nil of 2019.

2.1.The brief facts necessary for the purpose are that the trial of the suit has commenced and the plaintiff has examined himself in chief and so was one of his witness as P.W.2. However, they were not cross-examined by defendants 1 and 2, whereas, defendants 3 and 4 have cross-examined them. In these circumstances, defendants 1 and 2 were set ex-parte. Ultimately, defendants 3 and 4 did not offer any contest. Ultimately, a decree came to be passed by the trial Court. Contending that the said decree is an ex-parte decree passed against appellants/defendants 1 and 2, an I.A(unnumbered) of 2019 came to be filed to set aside the ex-parte decree.

2.2.The learned trial Judge has held that the decree has been passed on merits, and therefore, a petition under Order 9 Rule 13 CPC is not maintainable, and dismissed the said interlocutory application. Challenging the same, defendants 1 and 2 have approached this Court with this appeal.



3. Heard, both sides.

4. It is settled law that when defendants either did not cross-examine or they do not produce evidence on their side, the Court is duty bound to pass an ex-parte decree within the manner contemplated in Order 9 Rule 13 CPC., The trial Judge appeared to have missed this point. The learned counsel for the first respondent fairly conceded to this position in law.

5. The Civil Miscellaneous Appeal is hence allowed. The learned counsel for the first respondent/plaintiff made a statement that the plaintiff is in no mood to oppose the petition to set aside the ex-parte decree passed, and only require the Court to direct the trial Court to expedite the disposal of the matter. The learned counsel for the appellants submitted that he would participate in the trial and the appellants/defendants 1 and 2 would lend their utmost co-operation for expeditious disposal of the suit.

6. In the result, the Civil Miscellaneous Appeal is allowed and the order dated 20.01.2020 in unnumbered I.A.No. of 2019 in O.S.No.17/2016 on the file of the Additional District Judge, Palani is set aside. The learned Additional District Judge, Palani is now required to take the unnumbered Interlocutory Application on record and dispose of the suit at the very earliest, at any rate not later than 30.04.2021. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Tsg-2

To

The Additional District Judge, Palani.

Copy to

The Section Officer, V.R. Section,

Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.H.LAKSHMI SANKAR, Advocate (SR-24165[F] dated 07/12/2020)

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-24521[F] dated 08/12/2020)

C.M.A(MD) No. 607 of 2020

07.12.2020

VR(CO)

TR(09.12.2020) 2P 6C

<https://hcservices.ecourts.gov.in/hcservices/>