



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No.816 of 2019

and

C.M.P.No.5344 of 2019

S.Hariharan

...Petitioner

Versus

Shankar

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order in I.A.No.284 of 2017 in O.S.No.10 of 2012, passed by the learned Additional District Munsif, Chidambaram on 20.08.2018.

For Petitioner : Mr.N.Ganesh

For Respondent : Mr.Muthukumar

ORDER

The petitioner is challenging the order passed by the learned Additional District Munsif, Chidambaram in I.A.No.284 of 2017 in O.S.No.10 of 2012, dated 20.08.2018.

2. The revision petitioner is the respondent in I.A.No.284 of 2017 in O.S.No.10 of 2012, pending on the file of Additional District Munsiff Court, Chidambaram, filed by him under Order 9 Rule 13 CRP to set aside the ex-parte decree which was passed against him by the learned trial Judge, dated 20.08.2018. The said order is objected by the plaintiff.

3. At the time of arguments, the learned counsel for the revision petitioner submitted that the application to set aside the ex-parte decree by the defendant was not enclosed with any medical proof to show that he was under illness. In spite of that the trial Court erroneously allowed the application. Hence, praying to allow the revision. But the learned counsel for the respondent / defendant submitted that he is having valid defence to defend his case and the absence of the defendant on the particular date, was neither willful nor wanton.



4. Considering the submissions made by both sides counsel and on a perusal of the records, it is seen that the plaintiff herein filed a suit in O.S.No,.9 of 2011 before the learned Judicial Magistrate -cum- District Munsiff, Kattumannar for the relief of declaration, possession and other consequential injunctions. The defendant also filed his written statement in the year 2000. He filed elaborate written statement. Admittedly, at the time of the trial, he was absent, and hence he was set ex-parte. Though there is no medical proof attached to defend the case, the trial Court has given a fair opportunity, and accordingly the petition was allowed. Having come to the Court for the relief of declaration, possession and other consequential reliefs, the plaintiff could not enjoy the decree by way of ex-parte considering the issue between the parties with regard to the suit property, which is to be adjudicated by both oral and documentary evidence on merits and this right can be exercised by the concerned party before the trial Court who is the fact finding authority. Hence to prove the defence, the defendant was given fair opportunity by the trial Court, which needs no interference by this Court.

5. Accordingly, this Civil Revision Petition is dismissed as devoid of merits. The suit is of the year 2011, hence the learned trial Judge is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rri

To

1.The Additional District Munsif,
Chidambaram.

+1 CC to Mr.A.Muthukumar, Advocate sr 55180.

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and
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UM(CO)
SP(27/01/2022)