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C.R.P(NPD).No.808 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2021

CORAM:

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

C.R.P.(NPD).No.808 of 2019

and CMP.No.5311 of 2019

1.Valeeswaran @ G.Balasubramaniam

2.G.Elumalai

... Petitioners

Versus

1.Thamaraiselvan

2.Haridoss

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order passed by the Subordinate Judge's Court, Poonamallee, dated 21.12.2018 in CMA.No.37 of 2012 reversing the fair and decreetal order passed by the Principal District Munsif Court, Poonamallee, dated 12.10.2012 in I.A.No.241 of 2012 in O.S.No.521 of 2004.

For Petitioners : Mr.P.Valliappan

For Respondents : Mr.M.V.Seshachari

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed by the Subordinate Court, Poonamallee, dated 21.12.2018 in CMA.No.37 of 2012 reversing the fair and decreetal order



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passed by the Principal District Munsif Court, Poonamallee dated 12.10.2012

in I.A.No.241 of 2012 in O.S.No.521 of 2004.

2.Heard both sides.

3.Challenging the order passed in I.A.No.241 of 2012, in O.S.No.521 of 2004, the respondent/plaintiff preferred this revision contending that after passing of the ex-parte decree, the defendants conveyed certain items of the properties, but without disclosing the facts, they filed an application to set aside the ex-parte decree and the same was dismissed by the trial Judge. Against which, he preferred in CMA.No.37 of 2012, on the file of the Subordinate Court, Poonamallee. On hearing both sides, the said CMA was allowed. Aggrieved by that, the plaintiff preferred this revision.

4. The learned counsel for the petitioner would submit that in order to drag on the proceedings, the defendants purposely remained ex-parte and after passing of the ex-parte decree, they conveyed certain properties. Such conduct of the defendants was not accepted by the First Appellate court



while considering the CMA and accordingly he prayed to set aside the order passed in the CMA. He also pointed out that nearly after two years of the ex-parte decree, they approached the Court with ulterior motive even though the condonation of delay petition was allowed but the same cannot be taken into advantage to decide the Order 9 Rule 13 CPC. Hence, he prayed to allow this revision.

5. The learned counsel for the respondent submits that one of the items of the suit property was rectified with the knowledge of the plaintiff and they have not suppressed before this Court. On perusal of the affidavit, he has not mentioned those facts.

6. But on seeing the facts of the case, the plaintiff filed the suit in the year 2004, for the relief of declaration and recovery of possession and the same is contested by the defendant, subsequently, he remained ex-parte . It is also noted that there was a rectified deed dated 08.08.2012, during that period the ex-parte decree was in force. But the defendant filed a written statement along with this application submitting that he is having valid



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defence to prove their claim. After filing of the written statement, now the Court has framed issues. Unless the exparte decree is set aside, both the parties concerned will not be able to prove their claim clearly by adducing evidence on their side. Therefore, this Court is inclined to confirm the order passed in the CMA which allowed an application under Order 9 Rule 13 CPC, in order to give fair opportunity to the parties. The plaintiff has every right to raise his defence before the trial Court without prejudice to the contentions in the revision.

7. Accordingly, this revision petition is dismissed. The suit filed in the year 2001 was transferred to Poonamallee Court in the year 2004. Therefore, the trial Judge is directed to dispose of the matter within a period of six months from the date of receipt of a copy of this order. The parties are directed to co-operate for the early disposal of the matter without unnecessary delay. Consequently, connected miscellaneous petition is closed. No costs.

29.10.2021

Internet : Yes / No
Index : Yes / No
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To

1. The Subordinate Judge's Court,
Poonamallee.

2.The Principal District Munsif Court,
Poonamallee.



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T.V.THAMILSELVI, J.

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