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C.R.P(PD)No.840 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No.840 of 2020

and

C.M.P.No.4467 of 2020

1.Murugan
2.Vijayalakshmi
3.Karpagavalli
4.Gokul

..Petitioners

Vs.

Vasantha

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 27.01.2020 made in I.A.No.3 of 2019 in OS.No.62 of 2015 on the file of the learned Additional District Judge, Dharmapuri, Dharmapuri District and allow this Civil Revision Petition.

For Petitioners : Mr.M.R.Jothimanian

For Respondents : M/s.S.Thirumavalavan

ORDER

The Challenge in this revision is to the order of the trial Court viz., Additional District Munsif, Dharmapuri passed in I.A.No.3 of 2019 in O.S.No.62 of 2015, dismissing the application filed by their petitioners



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seeking to set aside the orders, setting them *exparte* order passed on

16.11.2015 and 29.06.2016.

2. The deponent in the affidavit viz., 5th and 1st defendants in the suit were set *exparte* on 16.11.2015; the other two petitioners viz., the defendants 2 and 3 were set *exparte* on 26.09.2016. Nearly after 3 1/2 years, they have come up with this application seeking to set aside the *exparte* under Order 9 Rule 7 of the Code of Civil Procedure.

3. The reasons assigned for the absence was that the petitioners 2 and 3 are married daughters and they were living away; 4th petitioner was doing his engineering; 1st petitioner was told that there would be a compromise and he believed the version of the plaintiff and did not choose to contest the suit. However, the 3rd defendant, who is the son of the 1st petitioner was contesting the suit throughout.



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4.The suit is one for declaration of title and injunction based on a sale deed dated 14.02.2011 which was registered compulsorily as document No.483 of 2012. It is also stated that 3rd defendant in the suit, Elavarasan has challenged the order directing compulsory registration in a properly constituted suit. The said suit is pending. This attempt by the petitioners to have an *exparte* order set aside was resisted by the plaintiff/respondent contending that the petitioners are highly belated and the same has been filed only to aid the 3rd defendant in prolonging the suit. The fact that the application was so timed and it was filed after the Court closed the evidence of the plaintiff without the plaintiff being cross-examined due to the persistent failure on the part of 3rd defendant to cross-examine P.W.1.

5. The learned trial Judge, who heard the application, upon a consideration of the sufficiency of the reasons assigned for the absence held that the defendants/petitioners have not made out a good cause for their absence on the date on which they were set *exparte*.



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6. Taking into account the timing of the petition, the learned trial Judge held that it is a *malafide* attempt to aid 3rd defendant to protract the suit. On the said conclusion, the learned trial Judge dismissed the suit.

7. Mr.M.R.Jothimanian, learned counsel appearing for the petitioners would vehemently contend that the learned trial Judge was not right in dismissing the application. He would submit that the learned trial Judge erroneously concluded that the application is barred by limitation. He would also placed reliance upon my Judgement in '**Rajasekar Vs. Govindammal (Late) I.Dhavamani**' reported in **2020 (6) CTC 724**, wherein, I have held that there is no limitation for filing an application under Order 9 Rule 7 of the Code of Civil Procedure.

8. A perusal of the order of the learned Additional District Judge shows that the application has not been dismissed on the ground that it is barred by limitation. The learned Additional District Judge has found that the attempt of the petitioner is *malafide* and the reason assigning by them



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would not constitute a good cause as required under Order 9 Rule 7 of the Code of the Civil Procedure.

9. The petitioners herein, who are the parties to the proceedings for compulsory registration have not chosen to join 3rd defendant in the statutory suit filed by him challenging the order of the compulsory registration also. I therefore, do not find any reason to interfere with the order of the learned Trial Judge and hence, the Revision fails.

10. Accordingly, this Civil Revision Petition is dismissed and the order of the learned Additional District Judge, Dharmapuri dated 27.01.2020 passed in I.A.No.3 of 2019 in OS.No.62 of 2015 is confirmed. No costs. Consequently, connected civil miscellaneous petition is closed.

30.11.2021

jas/sni
Internet:Yes
Index:No
Speaking order



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R.SUBRAMANIAN, J.

jas/sni

To:-

The learned Additional District Judge,
Dharmapuri, Dharmapuri District

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