

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 16.7.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.(NPD) No.1367 of 2016

Thiru.Ellappan

Petitioner

vs.

Thiru.Sadaiyappan alias Pichandi

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and Decree dated passed in 22.8.2006 passed in O.S.No.3 of 1999 by the District Munsif, Chingleput.

For Petitioner : Mr.Om Prakash, Senior Counsel for
Mr.S.Ruban Prabu

For Respondents : Mr.R.Amardeep for
M/s.Tamizh Law Firm

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ORDER

The revision petition has been filed seeking to set aside the ex parte judgment and decree dated 22.8.2006 passed in O.S.No.3 of 1999 by the District Munsif, Chingleput and to remand the suit to the District Munsif, Chingleput to decide the same on merits and in

accordance with law.

2. The petitioner is the defendant in O.S.No.3 of 1999 filed by the respondent/plaintiff seeking for permanent injunction restraining the defendant, his men, agent, servants, sons and other relatives, henchmen, agents from interfering into the possession and enjoyment of the schedule mentioned property in any manner.

3. The suit was filed by the respondent herein contending that the suit 'A' schedule property had been in possession of his family members continuously for more than the statutory period and the plaintiff has been residing there by raising construction therein and subsequently, he had purchased the 'B' schedule property vide sale deed dated 13.7.1992 and thus, he is the absolute owner of the suit properties and since the revision petitioner/defendant attempted to trespass into the suit properties on several occasions, the plaintiff had to file the present suit.

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4. The revision petitioner/defendant had filed a written statement, however, since the counsel, who appeared for the defendant reported no instructions, the suit was decreed ex parte and as against the ex parte judgment and decree, the present civil revision petition has been filed by the defendant.

5. The summary of the submission made by the Mr.Om Prakash, learned Senior Counsel appearing for the petitioner is as under:-

i) The petitioner and the respondent are close relatives. The suit 'A' schedule property is classified as grama natham and it is the part and parcel of the land covered in old S.No.52/1B and one Murugan, the grandfather of the plaintiff and defendant was residing therein by putting up a thatched hut and the total extent in possession and enjoyment of Murugan was 6 cents and the said Murugan died intestate when the defendant was 3 years old leaving behind him his sons Raju, Sadayan and Parvathiyan as legal heirs and soon after the demise of Murugan, the said 6 cents were partitioned among his heirs about 40 years ago and in accordance with such partition, the parties were allotted 2 cents each and thus the revision petitioner being son of Sadayan and the plaintiff being son of Parvathiyan have been in

separate possession of such shares.

ii) Whiles, the respondent/plaintiff had filed the suit seeking for injunction. Though the revision petitioner/defendant had filed a detailed written statement, at that stage and when the suit was pending, a compromise was effected among the members of the family and that the respondent/plaintiff also undertook that he would not proceed any further and believing that the plaintiff would not pursue the matter further and that there was no disturbance on either side, they were living peacefully, but, later, by contending that respondent/defendant attempts to interfere with the possession of the plaintiff, the plaintiff had obtained the decree.

iii) Due to some communication gap, the revision petitioner/defendant was not aware of the ex parte decree passed against him in the suit and when he happened to know about the same, he had approached this court seeking indulgence.

iv) Though there a delay in filing the civil revision petition, the very decree itself is passed not in accordance with the provisions of

Order XX Rule 4 and 5 of CPC and under Section 2(9) CPC and thereby the entire decree is erroneous and needs to be set aside and the matter has to be remanded back to the court to pass a judgment in accordance with law. In support of his contention, the learned Senior Counsel would rely upon the decisions in ***Meenakshisundaram Textiles v. V.Valliammal Textiles Ltd. (2011 3 CTC 168 (DB)*** and ***N.Maheswari v. Mariappan and others (2013(2) CTC 388)***.

v) Though a detailed written statement had been filed and issues were framed, the judgment and decree does not satisfy the minimum requirement of law and it is an ex parte order which is erroneous in law and thereby he would seek that the revision has to be allowed and the judgment and decree passed by the court below needs to be set aside.

vi) So far as the delay in approaching this court seeking to set aside the ex parte decree is concerned, there had been a delay on the part of the counsel for the revision petitioner/defendant in reminding of the matter and the petitioner/defendant and respondent/plaintiff being close relatives and since after the decree,

the respondent has neither taken any steps nor interfered with the possession of the property by the revision petitioner, the revision petitioner was to believe that the respondent/plaintiff would not proceed further as per the compromise effected between the parties due to the interference of family members and therefore, the respondent/plaintiff cannot claim that he can enforce the decree.

vii) When the decree itself is erroneous, it cannot be enforced and this court has got powers under Article 227 of the Constitution of India to set aside the decree.

6. Mr.R.Amardeep, learned counsel representing the respondent would submit that though the decree is not in consonance with the provisions of CPC, the petitioner cannot take it for his advantage having slept over for several years. He would further submit that it is not the case where the petitioner was not representing, but, he had entrusted the case to a counsel and had filed written statement but, thereafter, wilfully remained exparte. He would also submit that though the respondent/defendant was provided with sufficient opportunity, he remained absent and the counsel for the respondent

who appeared before the Trial Court had reported no instructions and only after that the Trial Court has passed the judgment and therefore, now, he cannot get the immunity from non-prosecuting his case by appearing before the court and therefore, he would pray that the petitioner is not entitled for any indulgence of this court.

7. Heard the learned counsel appearing for the parties and perused the materials available on record.

8. The suit in O.S.No.3 of 1999 had been filed seeking for permanent injunction. Admittedly, the petitioner/defendant and the respondent/plaintiff are close relatives. It is case of the petitioner/defendant that he had filed a written statement and based on the written statement, the Trial Court had also framed issues whereas the Judgment of the Trial Court is a cryptic and unreasoned one without adverting to the merits of the written statement or the issues framed. In such event, it is an erroneous order and it needs to be set aside.

9. The law is already well settled that in a suit, even though the defendant remains ex parte, the duty is cast upon the Trial Court to go into the issues and ensure that the plaintiff has proved his case on the basis of oral and documentary evidence. Among such decisions, this court feels that it would be apt to refer to the following decisions. In ***Meenakshisundaram Textiles v. V.Valliammal Textiles Ltd. (2011 3 CTC 168 (DB)*** and ***N.Maheswari v. Mariappan and others (2013(2) CTC 388)***, this court has held that when the defendant is set ex parte in a suit, the court should be extra careful in such a case and it should consider the pleadings and evidence and arrive at a finding as to whether the plaintiff has made out a case for a decree and thereby a duty is cast upon the Trial Court frame necessary issues and to deliver judgment on the basis of evidence adduced and only because the defendant remained ex parte in a suit, the court cannot pass a judgment without giving any reasons and the **onus is high on the Trial Court when the defendant remains ex parte** as the Court has to ensure that the plaintiff's case has been proved. Further, the judgment should contain reasons and should be in conformity with the provisions of Section 2(9) read with Order XX, Rule 4 of CPC.

10. Considering the facts and circumstances of the present case that the petitioner and respondent are relatives and the submission that after the decree, there was no interference from other side, without going into the facts in depth, this court deems it fit to set aside the ex parte decree passed by the Trial Court and remand the matter to the Trial Court subject to payment of Rs.10,000/- as cost payable by the revision petitioner/defendant to the respondent/plaintiff within three weeks from the date of receipt of the copy of the order. The Trial Court is directed to dispose of the suit within six months from the date of receipt of copy of this order. The civil revision petition is ordered accordingly. No costs.

16.7.2021.

Index: Yes/No.
Internet: Yes/No.
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To

District Munsif,
Chingleput.

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A.D.JAGADISH CHANDIRA, J.

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