

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.3730 of 2016
and C.M.P.No.18924 of 2016

1.Subramani
2.Ganesan
3.Ramadas

...Petitioners

Vs

Natarajan

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 13.04.2016 passed in I.A.No.21 of 2016 in O.S.No.34 of 2013 on the file of the Subordinate Judge at Rasipuram, Namakkal district.

For Petitioners : Mr.G.Munuraj

For Respondent : No appearance

ORDER

The Civil Revision Petition is directed as against the fair and decretal order dated 13.04.2016 passed in I.A.No.21 of 2016 in O.S.No.34 of 2013 on the file of the Subordinate Judge at Rasipuram, Namakkal district, thereby dismissing the petition filed to set aside the exparte decree.

2.The respondent filed a suit for declaration, injunction and mandatory injunction in respect of the suit property as against the petitioners. The petitioners appeared through their counsel and thereafter they failed to appear before the trial Court, since the 1st petitioner herein fell ill and admitted to the hospital on 06.11.2013 at Government Medical Centre, Coimbatore. He also undergone surgery on 07.11.2013. Therefore, the petitioners could not contact their counsel and failed to instruct their counsel to file the written statement in the main suit. Therefore, they were set as an exparte on 10.02.2014. Immediately they came to know about the exparte decree passed against them and filed a petition to set aside the exparte decree.

3.The learned counsel for the petitioners would submit that the petition filed to set aside the exparte decree was allowed on cost by an order dated 13.04.2016 in I.A.No.21 of 2016. Though the e-Court adjudication diary indicated that the I.A.No.21 of 2016 pending for filing counter, the petitioners were under the impression that the petition was adjourned for filing counter. Whereas the Court below dismissed the petition for default and non payment of cost to the respondents on 13.04.2016. Therefore the

petitioners also filed a petition in I.A.No.146 of 2016 to restore the petition to set aside the exparte decree.

4.Considering the above facts and circumstances of the case order dated 13.04.2016 passed in I.A.No.21 of 2016 in O.S.No.34 of 2013 on the file of the Subordinate Judge at Rasipuram, Namakkal district, is set aside and accordingly, the Civil Revision Petition is allowed.

5.The trial Court is directed to dispose the I.A.No.21 of 2016 filed by the petitioner to set aside the exparte decree on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order and thereafter, the trial Court is directed to complete the trial in O.S.No.34 of 2013 on the file of the Subordinate Judge at Rasipuram, Namakkal district, within a period of 12 months. No costs. Consequently connected miscellaneous petition is closed.

22.01.2021

Index:Yes/No

Internet: Yes/No

Speaking Order: Yes/No

Jer

To

The Subordinate Judge at Rasipuram, Namakkal district.

G.K.ILANTHIRAIYAN,J,

Jer



C.R.P.(P.D).No.3730 of 2016
and C.M.P.No.18924 of 2016

WEB COPY

22.01.2021