



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.941 of 2020
and
C.M.P. (MD) No.6136 of 2020

K.M.Shajahan

.. Petitioner/1st Respondent/
Plaintiff

-vs-

1.Chinnammal

.. Respondent/Petitioner/
3rd Defendant

2.Fathima

3.Mohamed Ismail

.. Respondents/Respondents/
Defendants 1 and 2

Prayer :- Petition filed under Section 115 Civil Procedure Code to set aside the order and decree passed dated 30.09.2020 made in I.A.No.1 of 2019 in O.S.No.213 of 2014 on the file of the Principal District Munsif, Manapparai.

For Petitioner : Mr.G.Gomathi Sankar

For R1 : Mr.H.Lakshmi Sankar

ORDER

The plaintiff, in the suit in O.S.No.213 of 2014, is the revision petitioner before this Court challenging the order dated 30.09.2020 passed by the learned Principal District Munsif, Manapparai, condoning the delay of 1192 days in filing the petition to set aside the ex-parte order by the 3rd defendant in the suit.

2.The facts in brief are as follows:-

2.1. The plaintiff had filed the suit for a declaration that the suit properties belonged to him and for a consequential permanent injunction restraining the defendants, their men and agents from interfering with his peaceful possession and enjoyment of the suit property. The suit was decreed ex-parte and an ex-parte decree came to be passed against the 3rd defendant on 13.06.2016.



3.The case of the 3rd defendant is that she had not received any summons from the Court and she has been residing in the same address. It is her case that she has purchased the suit property from defendants 1 and 2 on 07.02.2000. The plaintiff had filed a writ petition before this Bench in W.P.(MD) No.21300 of 2019 and it is only then that the 3rd defendant had come to know about the suit and the exparte decree contained therein. Immediately, she had come forward to file an application.

4.The plaintiff has filed a counter *inter alia* contending that the 3rd defendant has come forward with a false case. She had refused to receive the summon and therefore, she was set exparte. Despite being put on notice about the suit, she had not chosen to contest the same and therefore, the application had to be dismissed. The plaintiff would further submit that the 3rd defendant was aware of the suit, since there was a criminal complaint against her son for trespassing into the suit property. She was also aware about the steps being taken by the plaintiff to have the patta transferred.

5.The learned Principal District Munsif, Manapparai, by order dated 30.09.2020 allowed the said application with costs of Rs.2,000/- payable to the plaintiff/petitioner herein. Challenging the same, the petitioner/plaintiff is before this Court.

6.Learned counsel appearing for the petitioner/plaintiff would submit that the learned Judge had herself observed that on a perusal of the notes paper and the Ameen report, it was clear that the 3rd defendant has refused to receive the summon and therefore, was called absent and set exparte. Despite observing so, the learned Judge had proceeded to allow the application only on the ground that the 3rd defendant had purchased the property and there appears to be a dispute over the title to the property. The learned counsel would submit that only on sufficient grounds being shown, the delay can be condoned. Per contra, Mr.Lakshmi Shankar, learned counsel appearing on behalf of the 1st respondent/3rd defendant would draw the attention of this Court to the Ameen report relating to the service of summons.

7.Heard both counsels.

8.A perusal of the Ameen's report would show that the summons was given to the 3rd defendant, who read it and thereafter, refused to receive the same. However, a perusal of the vakalat as well as the affidavit filed in support of the condone delay application would show that the 3rd defendant is an illiterate women, as she has only affixed her left thumb impression. Therefore, the contention that the summons had been served definitely stands disproved and the Ameen's report appears to be a manipulated one.



9.In the above circumstances, this Court holds that the reason pleaded by the plaintiff fails and the observation of the learned Principal District Munsif, Manapparai, also appears to be incorrect.

10.In the result, this Civil Revision Petition is dismissed. However, this Court permits the petitioner to withdraw the cost, which has been credited to the deposit of the suit within a period of two weeks from the date of receipt of a copy of this order. In case, the petitioner does not withdraw the cost within the said period, the money shall be made over to the 1st respondent-Chinnammal. Considering the fact that the suit is of the year 2014, the same shall be disposed of as expeditiously as possible not later than a period of eight months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Principal District Munsif Court,
Manapparai.

+1 CC to M/s.G.GOMATHISANKAR, Advocate (SR-38206[F] dated 10/12/2021)

C.R.P. (NPD) (MD) No.941 of 2020

Dated: 10.12.2021

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