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C.R.P(MD)No. 1398 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.09.2021**

CORAM

THE HON'BLE **MRS.JUSTICE S.ANANTHI**

C.R.P(MD) No.1398 of 2021
and C.M.P.(MD).No.7896 of 2021

Sudalaimani

...Revision Petitioner

Vs.

1. Ponnuthai @ Gnanasundari
2. Alees @ Anna Pooranathammal
3. Shanmugaraj
4. Suhithabai Kovilpillai
5. Devadoss
6. Selvakani
7. D.Pilligram
8. Jeyarani
9. Joseph
10. Prasanna
11. Sornageetha

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair order and Decreetal order dated 19.02.2021 passed in I.A.No.1 of 2019 in O.S.No.400 of 2009 on the file of the Additional District Munsiff Court, Tenkasi and thereby allow the Civil Revision Petition.

For Petitioner : Mr.R.Sreenivasan

ORDER

The Civil Revision Petition has been filed to set aside the Fair order and Decreetal order dated 19.02.2021 passed in I.A.No.1 of 2019



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in O.S.No.400 of 2009 on the file of the Additional District Munsiff Court, Tenkasi

2. The petitioner herein is the plaintiff in in O.S.No.400 of 2009 on the file of the Additional District Munsif Court, Tenkasi. He filed the said suit for declaration of title and permanent injunction. In the said suit, an *ex parte* decree was passed in favour of the plaintiff/petitioner herein by Judgment and decree dated 19.09.2016. Therefore, the defendants 2 and 3 filed an interlocutory application to condone the delay of 167 days in filing the petition to set aside the *ex parte* decree dated 19.09.2016 passed in O.S.No.400 of 2009. By order dated 04.04.2019, the said application was allowed with cost of Rs.500/- payable to the plaintiff on or before 03.04.2019. Thereafter, I.A.No.1 of 2019 has been filed to set aside the *ex parte* decree dated 19.09.2016 passed in O.S.No.400 of 2009. By order dated 19.02.2021, the said application was allowed. Aggrieved over the same, the present Civil Miscellaneous Petition has been filed by the plaintiff/petitioner.

3. The learned counsel appearing for the petitioner submits that in the said suit, issues were framed on 05.02.2010. After framing the issues, trial has commenced and the plaintiff/petitioner filed the proof



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affidavit on 02.06.2016 and when the case was posted for cross examination of plaintiff, the defendants have not chosen to cross examine the plaintiff. Though the suit was posted on 08.06.2016, they have not appeared before the trial Court. Therefore, the trial Court set them *ex parte* and thereafter, after hearing the arguments of the plaintiff on various dates, the trial Court decreed the suit only on 19.09.2019. He further submits that the defendants, in order to get rid of the plaintiff/petitioner from enjoying the fruits of the decree, had intentionally filed the above said interlocutory application. Therefore, he prayed for setting aside the order dated 19.02.2021 passed in I.A.No.1 of 2019 in O.S.No.400 of 2009 on the file of the Additional District Munsiff Court, Tenkasi.

4. Heard the arguments made by the learned counsel appearing for the petitioner.

5. The suit was filed by the plaintiff/petitioner herein for declaration of title with regard to 3rd and 4th schedule properties and also for permanent injunction restraining the defendants 2, 3, 5 and 9 from interfering with the peaceful possession of the properties. Since the defendants 2 and 3 have not appeared before the trial Court at the time of



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cross examination of the plaintiff, the trial Court set them *ex parte*.

Therefore, they have filed the said interlocutory application to set aside the ex parte decree passed by the trial Court. Considering the nature of relief sought for in the suit, the trial Court, in order to render complete justice, has allowed the said interlocutory application. Therefore, this Court does not find any fault with the order of the trial Court.

6. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

7. Considering that the suit is of the year 2009, the Additional District Munsif Court, Tenkasi, is directed to conclude the trial and dispose of the suit in O.S.No.400 of 2009, within a period of four months from the date of receipt of a copy of this order.

29.09.2021

Index : Yes/No
Internet: Yes/No
kmm

To

The Additional District Munsif Court,
Tenkasi.



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S.ANANTHI, J.,

kmm

Order made in
C.R.P(MD)No.1398 of 2021

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