



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (NPD) (MD)No.2203 of 2018

WEB COPY

R.Bramma Krishna Raja Rajeswari
Through her Power Agent K.Rajangam

... Petitioner/Petitioner/Defendant

Vs.

Syed Mohammed Bakrutheen (died)

1.Mahdhoom Bakrutheen

2.Bhilal Abdullah

3.Sulaiha Beevi Bakrutheen

4.Ayisha Fathima Bakrutheen

5.Kathija Rahima Bakrutheen

... Respondents/Respondents /
Plaintiffs

PRAYER:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair order and decreetal order passed in I.A.No.217 of 2014 in O.S.No.1 of 2008 on the file of the Sub Court, Ramanathapuram, dated 24.07.2018 and allow this civil revision petition.

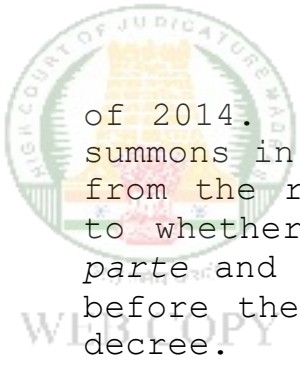
For Petitioner : Mr.C.Vakeeswaran

For Respondents : Mr.A.Arumugam

ORDER

The defendant, who has filed an application for condoning the delay of 1810 days in filing the petition to set aside the *ex parte* decree passed in O.S.No.1 of 2008, is the petitioner before this Court, since her application has been dismissed by the learned Subordinate Judge, Ramanathapuram.

2.The respondents had filed a suit in O.S.No.01 of 2008 on the file of the Subordinate Court, Ramanathapuram, for declaration that the plaintiffs is the absolute owner of the suit schedule property and also for permanent injunction. It appears that the petitioner/ defendant though served, had not entered appearance and therefore, an *ex parte* decree came to be passed on 16.03.2009. The petitioner/defendant has come forward with the impugned petition stating that she came to know about the *ex parte* decree only when the notice in I.A.No.34 of 2014 in R.C.O.P.No. 5



of 2014. It is her categoric case that she had not received any summons in the above proceedings either through Court or privately from the respondents. The learned Judge, without appreciating as to whether summon has been properly taken, set the defendant *ex parte* and passed the *ex parte* decree and the petitioner has come before the Court as soon as she had knowledge about the *ex parte* decree.

3.The respondents/plaintiffs had filed the counter statement *inter alia* denying the contention made in the petition for condonation of delay and stated that the summon issued to the last known residence has been returned as the door was locked. The summon issued through the court amina is affixed as the door locked and the summon issued through post was returned as not claimed. Thereafter, the Court had directed the respondents/plaintiffs to effect substituted service and accordingly, paper publication was taken and the respondents was set *ex parte*.

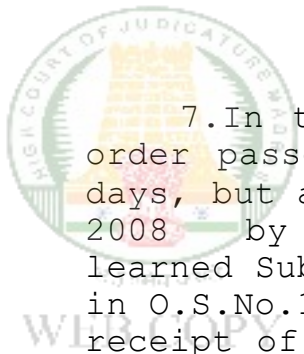
4.The learned Subordinate Judge on hearing both the counsel proceeded to dismiss the said application stating that the petitioner has not questioned the address shown in the suit and further even in the petition to restore the suit which was earlier dismissed for default, namely I.A.No.180 of 2008, the petitioner/defendant could not be served. The learned Judge took a view that the delay has not been properly explained. Hence, the petition was dismissed. Challenging the same, the petitioner is before this Court.

5.Heard the learned counsel appearing on either side and perused the records.

6.A reading of the *ex parte* judgment dated 16.03.2009 passed in O.S.No.1 of 2008 by the learned Subordinate Judge, Ramanathapuram, has startled this Court and the *ex parte* judgment has been filed in the form of proof affidavit. This statement in the vernacular, reads as follows:-

“ஒரு தலைபட்ச தீர்ப்புரை புரூப் அவிடவிட்டாக தாக்கல் செய்யப்பட்டது.”

That apart, the judgment does not conform to the provision of the Code of Civil Procedure which prescribes that the Court shall give reasons for its finding on each of the issue framed and its ultimate conclusion. The Honourable Supreme Court and this Court had time and again held that even in an *ex parte* proceeding, the learned Judge has to frame issues and give his finding on each of the issues and only then, would it constitute a judgment. In the instant case, not only the judgment is bereft of detail, but the learned Subordinate Judge has also stated that the judgment has been filed by the petitioner in the form of proof affidavit.



7.In these circumstances, this Court not only sets aside the order passed in I.A.No. 217 of 2014 to condone the delay of 1809 days, but also sets aside the *ex parte* decree passed in O.S.No.1 of 2008 by the learned Subordinate Judge, Ramanathapuram. The learned Subordinate Judge, Ramanathapuram shall dispose of the suit in O.S.No.1 of 2008 within a period of four months from the date of receipt of a copy of this order after giving an opportunity to the petitioner herein to submit her written statement. The written statement shall be filed within a period of two weeks from the date on which the learned Subordinate Judge takes the suit once again on file.

8.In the result, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp

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 Subordinate Judge,
Ramanathapuram.

+1 C.C. to Mr.V.GEORGERAJA, Advocate, S.R.No.37102.

+1 C.C. to Mr.C.VAKEESWARAN, Advocaee, S.R.No.36840.

C.R.P (NPD) (MD)No.2203 of 2018

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