



A.No. 4712 of 2022
And
C.S.No. 356 of 2021

C.V.KARTHIKEYAN, J.

This Application has been filed seeking to set aside the exparte decree dated 15.09.2022.

2. The suit had been filed by the plaintiffs claiming that they had purchased the property from the second defendant. It is claimed that the second defendant was the registered power of attorney agent of the first defendant. Subsequently claiming that the second defendant had not properly passed on the consideration to the first defendant, the first defendant and the third defendant are alleged to have dispossessed the plaintiffs. The plaintiffs have therefore filed the suit seeking declaration of title and recovery of possession and for an injunction restraining the defendants from dealing with or alienating the suit property.

3. The defedants did not feel it appropriate to appear before the Court and therefore, they were set exparte and an exparte decree had been passed on 15.09.2022 after examining the documents presented by the plaintiffs. Now, the



first defendant had filed the present Application along with the written statement seeking to set aside the exparte decree.

4. This Court had made certain observation while passing the exparte decree order observing that the counsel for the first defendant, who had repeatedly represented that necessary applications had been filed seeking to set aside the exparte order which was initially passed, but however, no such Application had been filed. Those notings had been extracted in the exparte decree. This had been pointed out by the learned counsel for the plaintiffs, who stated that this exposes the conduct of the first defendant in protracting the matter.

5. The learned counsel for the first defendant / applicants herein however stated that bona fide is reflected by the filing of the written statement and therefore stated that the first defendant cannot be held liable to representations made by the counsel in the Court.

6. At any rate, since a decree had ensued in favour of the plaintiffs and it is only appropriate that the title of the plaintiffs is declared in manner known to law and at the time of execution of the sale deed, the second defendant



was a lawful attorney of the first defendant, in order to avoid further proceedings or suits if any, in the future, it would only be appropriate that the issues are settled in this particular suit itself.

7. Viewed from that angle, I would set aside the exparte decree in so far as the first defendant/applicant is concerned. But since the plaintiffs had suffered by the dilatory tactics adopted by the defendants, I would also impose costs of Rs.5,000/- to be paid directly to the learned counsel for the plaintiffs. The costs is to be paid on or before 11.11.2022.

8. Call the matter again on 11.11.2022.

Vsg

26.10.2022



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C.V.KARTHIKEYAN, J.

Vsg

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