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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.3133 of 2017

and

C.M.P.No.14660 of 2017

1.Selvakumar

2.Palaniyammal

... Petitioners

Vs

1.Palaniyammal

2.Ravichandran

...Respondents

Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decreetal order of the Subordinate Judge, Sankari, dated 19.10.2016 in I.A.No.46 of 2016 in O.S.No.110 of 2013.

For Petitioners .. Mr.P.Valliappan

ORDER

Heard Mr.P.Valliappan, learned counsel for the petitioners / plaintiffs in O.S.No.110 of 2013. The petitioner are aggrieved by an order passed in I.A.No.46 of 2016 dated 19.10.2016 by the learned Sub Judge,



2.The said interlocutory application was taken out by the respondents herein / 1st and 2nd defendants in the suit seeking to set aside the ex-parte decree under Order IX Rule 13 CPC. It is to be mentioned that the suit in O.S.No.110 of 2013 had been filed by the petitioners / plaintiffs seeking partition and separate possession. A preliminary decree was also passed on 20.10.2014. Thereafter, the petitioners herein had filed an application seeking to pass final decree.

3.At that stage, the respondents herein / the defendants entered appearance and filed the aforementioned I.A.No.46 of 2016 under Order IX Rule 13 CPC to set aside the preliminary decree. There is no indication whether any application under Section 5 of the Limitation Act had been filed.

4.In the said application, a counter had been filed on behalf of the revision petitioners / plaintiffs, wherein they have very clearly stated that the final decree application was served on the respondents herein on 12.05.2015 and the Court notice was served on 22.05.2015. It was also stated that the respondents appeared in person. All these facts had been stated and a string of dates have also been given in the counter.



5. When an affidavit is filed and counter affidavit is filed, the learned Sub Judge, must realize the valuable rights of the parties are being adjudicated. To the said litigants, those issues are close to their hearts and of importance. Therefore, it is obligatory on the part of the Presiding Officer to atleast state or narrate the respective stands taken in the affidavit and in the counter affidavit filed.

6. Unfortunately, the order which has been passed is as follows and let me extract the entire order:

“ ORDER

To order to set aside the ex-parte decree passed by this Honourable Court dated 20.10.2014 against the Petitioner / 1st & 2nd Defendants.

Affidavit, counter and records perused. The written statement is filed along with this petition. The Court is found justification to extend one more opportunity to the petitioners/defendants to contest the case on merits. This petition is liable to be allowed on terms.

Accordingly, this petition is liable to be allowed on the payment of cost of sum of Rs.3,000/- (Rupees Three Thousand only) to the Respondents / Plaintiffs. It shall be paid on or before 25.10.2016. Failing which this petition



shall dismissed automatically.

For reporting compliance call on 26.10.2016.

*Pronounced by me in open court, this the 19th day
of October 2016.*

SUBORDINATE JUDGE

SANKARI”

7.A perusal of the same shows that it is not at all evident or clear whether, if on perusal of the affidavit, counter and records, the learned Sub Judge, had taken a decision that the application had been filed bonafide and that the dates stated in the counter are totally wrong and therefore rejected or whether the dates stated are actually correct, but still rejected. There must be some finding at least to justify the efforts taken in preparing and filing an affidavit and counter, raising differing contentions.

8.The entire order is bereft of reasons. It has to be interfered with and it is set aside. I am conscious that the respondents though served, have not appeared before this Court through counsel. But the names and addresses are printed in the cause list. In spite of them being served, they had taken a conscious decision not to appear before this Court. The matter is remitted back to the Sub Court, Sankari to re-hear I.A.No.46 of 2016, on the basis of the affidavit and the counter affidavit already filed and it is



hoped that the Presiding Officer who now re-hears I.A.No.46 of 2016 would give due importance to the averments made in the affidavit and in the counter affidavit and also examine the Court records to find out whether non-appearance during the judicial process was actually bonafide or a deliberate attempt on the part of the petitioners in I.A.No.46 of 2016.

9.With the above observations, the Civil Revision Petition is allowed by setting aside the order dated 19.10.2016 in I.A.No.46 of 2016 in O.S.No.110 of 2013 passed by the Sub Judge, Sankari. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

10.The learned counsel for the petitioners stated that the issue on maintainability will also have to be examined by the learned Sub Judge. That is an issue which goes along with any judicial decision. The Court will have to examine whether the Court has jurisdiction, whether the application has been filed within the period of limitation and then also examine whether the application is maintainable and then examine the facts therein and apply the law to the facts. This process has to be undertaken.

16.02.2022



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Internet: Yes/No

Index: Yes/No

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To,
The Sub Court, Sankari.

C.V.KARTHIKEYAN,J.

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