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C.R.P. No. 380 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 380 of 2017
and
C.M.P. No. 1681 of 2017

1. Krishnamoorthy,
S/o. Late Murugesan
2. Oulagaratchagan,
S/o. M. Krishnamoorthy
3. Vadivazhagan,
S/o. M. Krishnamoorthy
4. Kandiappan,
S/o. M. Krishnamoorthy
5. Indira,
W/o. M.Krishnamoorthy

... Petitioners

Versus

1. Mrs. Rajeswari @ Saraswathi,
W/o. Kasinathan @ Oothukatan
2. Mrs.Egambaravalli,
W/o. P. Rajaram



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3. Kaliyugam @ Abimannan,
S/o. Late Murugesan

4. Sakthivel,

5. Rajiv Gandhi,
S/o. M. Krishnamoorthy

... Respondents

PRAYER : Civil Revision Petition filed under Art.227 of Constitution of India, praying to set aside the fair and decreetal order dated 16.11.2016 in unnumbered I.A.No. Of 2016 in I.A.No. 277 of 2016 in O.S.No.833 of 2008 on the file of 1st Addl. District Munsif Court at Puducherry.

For Petitioners : Mr.T.P.Prabakaran

For Respondents : Mr.D.Ravichander for R1 & R2

R3 – no appearance

R4 & R5 - left

ORDER

Challenging the impugned order passed in unnumbered I.A. of 2016 filed by the defendants 2 to 5 and 7, the present Civil Revision Petition has been filed.



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WEB COPY 2. The revision petitioners are the defendants in the suit in O.S.

No.833 of 2008, which was filed by the respondents 1 and 2/plaintiffs herein for the relief of declaration and partition and other consequential relief, in which the defendants 2 to 5 and 7 filed an application in I.A.No.277 of 2016 under Order 7 Rule 11 (d) of C.P.C. to reject the plaint under the ground of limitation and Benami Transaction Prohibition Act. In that application, counter objection was not filed by the plaintiffs. However, when the matter taken up for enquiry on 26.07.2016, the defendants 2 to 5 and 7 also not present and in absence of both parties, the learned trial judge passed an order dismissing the application as no merits. Having come to know about the order, immediately, the defendants 2 to 5 and 7 filed an application to set aside the exparte order under Order 9 Rule 7 r/w Sec.151 of C.P.C. On hearing the submissions of defendants 2 to 5 and 7, the trial court rejected the said application stating that at the earlier occasion, the trial court has not passed exparte order, but only after considering merits in the application filed in I.A.No.277 of 2016, the order was passed. Therefore, the said application, as such is not maintainable in law and accordingly, it



was rejected. Challenging the said findings, now the defendants 2 to 5 and 7 preferred this Civil Revision Petition.

3. The learned counsel appearing for Revision Petitioners submitted that they wanted to reject the plaint on the ground of limitation and Benami Transaction Prohibition Act. In that application, the plaintiffs have not raised any objection, but no opportunity was given to the defendants 2 to 5 and 7 to submit their contentions before the trial court. Without hearing their objections, the trial judge passed an order on merits. Even though the order was passed on merits, no opportunity was given to the defendants 2 to 5 and 7, which would clearly implicate that it is an *exparte* order. Hence, they are entitled to set aside the *exparte* order. But, the trial court not accepted the said fact. Therefore, he prayed to set aside the findings of the trial court.

4. By way of reply, the learned counsel for respondents 1 and 2/plaintiffs submitted that the revision petitioners are not entitled to file the application under Order 9 Rule 7 of C.P.C. to set aside the *exparte* order,



because the earlier order passed by the trial judge only on merits.

Furthermore, they are the petitioners in that application. Hence, the trial court has rightly rejected the application.

5. Heard and considered rival submissions of learned counsel for petitioner as well as respondent and perused the records.

6. Considering the facts and circumstances, whether the application is maintainable or not, but on seeing the facts, the trial court passed the order on merits without hearing both sides, more particularly, the revision petitioners, who filed an application to reject the plaint. The contentions discussed by the trial judge in the order would also reveals that they have given the reason to dismiss the application. Merely relying on those averments, the trial judge passed an order. The person, who approached the court for rejection of plaint, his submissions is to be heard with regard to maintainability of the plaint. Even though the application filed by him to set aside exparte order as such is not maintainable, but courts are not be fixed on technicalities. Moreover, the plaintiffs have not filed any objections



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before the trial court, but now raised objections before this court, as such, is not acceptable one. Therefore, this Court is inclined to set aside the findings given by the trial judge and the Revision Petitioners are directed to work out their remedy before the trial court.

7. In the result, this Civil Revision Petition is allowed and the order passed by the trial court in unnumbered I.A. of 2016 is set aside. The trial court is directed to number the I.A. and to decide the application on merits by giving opportunity to both sides. Liberty is also granted to the Respondents to file their objection, if any and on such objections, the trial court is directed to proceed with the case and dispose the same within a period of six months from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

I Addl. District Munsif,
Puducherry.

6/7



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T.V.THAMILSELVI, J.

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