



CRP(PD)(MD)No.2411 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 05.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.2411 of 2017
C.M.P(MD).No.11470 of 2017

Idol Sri Kalyana Pasupatheeswarasamy
Sri Kalyana Pasupatheeswarasamy Temple,
Rep.by its Executive Officer, Karur.

... Revision Petitioner

versus

V.Karuppannan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 25.07.2017 made in C.M.A.No.3 of 2017 on the file of the Additional District Judge, Karur reversing the fair and decretal order dated 06.06.2014 made in I.A.No.582 of 2013 in O.S.No.36 of 1993 on the file of the Additional Sub-ordinate Judge, Karur.

For Petitioner : Mr.P.Thiagarajan

For Respondent : Mr.K.Govindarajan



CRP(PD)(MD)No.2411 of 2017

WEB COPY

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 25.07.2017 passed in C.M.A.No.3 of 2017 by the learned Additional District Judge, Karur.

2. The petitioner is the plaintiff in O.S.No.36 of 1993 and filed a suit for declaration and recovery of possession against the respondent herein and 14 others. In O.S.No.36 of 1993, notice was ordered to the defendants, however, the same was returned with an endorsement “refused”, based on which, it was treated as valid service. The trial Court proceeded with the case and an *ex-parte* decree was passed on 20.08.1996. Thereafter, the petitioner Temple has filed an application for execution of the decree in E.P.No.81 of 2008 before the trial Court. On receipt of notice in E.P.No.81 of 2008, the respondent, after a lapse of 13 years, has filed an application under Order 9 Rule 13 C.P.C to set aside the *ex-parte* decree passed in O.S.No.36 of 1993 on the ground that he was not aware of the suit in O.S.No.36 of 1993. The trial Court, after ascertaining the fact that the notice



CRP(PD)(MD)No.2411 of 2017

in O.S.No.36 of 1993 was returned with an endorsement as “refused” and considering the conduct of the respondent in filing the application to set aside the ex-parte decree without any application under Section 5 of the Limitation Act, dismissed the application filed by the petitioner. As against the said order, the respondent preferred an appeal before the District Court, Karur in C.M.A.No.9 of 2014. However, the learned Appellate Court has allowed the appeal on the ground that an opportunity must be provided to the respondent to defend his case. Aggrieved over the same, the petitioner is before this Court.

3. Mr.P.Thiagarajan, learned counsel appearing for the petitioner submits that the suit was filed in the year 1993 and the respondent is aware of the suit. However, he has refused to receive the notice in O.S.No.36 of 1993 and now, he is taking a plea that he has not received any notice. On this ground, the learned Appellate Court ought to have rejected the request of the respondent. Moreover, the application was filed to set aside the ex-parte decree without any application under Section 5 of the Limitation Act, after a lapse of 13 years. Therefore, the trial Court has rightly dismissed the



CRP(PD)(MD)No.2411 of 2017

application filed by the respondent. However, the learned Appellate Court, without looking into the above facts, allowed the appeal. The respondent has filed a written statement along with the application and even as per the written statement, he has not made out any case in support of his contention.

4. The learned counsel appearing for the respondent submits that the respondent came to know about the decree passed in O.S.No.36 of 1993, only on receipt of the notice in E.P.No.81 of 2008. Immediately, he has filed an application to set aside the ex-parte decree along with the written statement. The suit was decreed without any discussion and the respondent must be provided one opportunity. Therefore, the Appellate Court, showing indulgence, has permitted for trial in the original suit and allowed the appeal.

5. This Court considered the rival submissions made on behalf of both sides and perused the materials available on record.



CRP(PD)(MD)No.2411 of 2017

6. It is seen from the records that the petitioner is the Temple having a vast extent of land donated by its devotees and some of the lands were occupied by the respondent and others. Therefore, the Executive Officer has filed the suit on behalf of the Temple for declaration and recovery of possession. In the suit, notice was ordered to the respondent and others. However, the respondent refused to receive the notice and the same was returned with an endorsement as “refused”. It was treated as valid service and the suit was decreed on 20.08.1996 and the respondent was set ex-parte. Thereafter, the application to set aside the *ex-parte* decree under Order 9 Rule 13 C.P.C was filed on 03.12.2009 by the respondent without any application to condone the delay under Section 5 of the Limitation Act. Taking note of the fact that the respondent has refused to receive the notice in the suit, the trial Court has rightly dismissed the application. However, the learned Appellate Court has allowed the appeal filed by the respondent for the reason that an opportunity must be provided to him.

7. As rightly pointed out by the learned counsel for the petitioner, the application was filed to set aside the ex-parte decree without any application



CRP(PD)(MD)No.2411 of 2017

under Section 5 of the Limitation Act, after a lapse of 13 years. The respondent was aware of the suit which was pending before the trial Court, since he has deliberately refused to receive the notice. Hence, this Court is inclined to set aside the fair and decreetal order dated 25.07.2017 passed in C.M.A.No.3 of 2017 by the learned Additional District Judge, Karur.

8. Accordingly, this Civil Revision Petition is allowed. No costs. Connected miscellaneous petition is closed.

05.07.2022

ssb

Index : Yes / No

Internet: Yes / No

To

1. Additional District Judge, Karur

2. Additional Sub-ordinate Judge, Karur.



WEB COPY



CRP(PD)(MD)No.2411 of 2017

B.PUGALENDHI, J.

ssb

CRP(PD)(MD)No.2411 of 2017

05.07.2022