



CRP.No. 3154 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2023

CORAM

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

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and

CMP.No. 19522 of 2023

A. Sri Swaminath

... Petitioner

Versus

Laxmi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the order made in IA.No. 4 of 2023 in O.S.No. 81 of 2018, dated 21.06.2023 on the file of the District Munsif Court, Perundurai.

For Petitioner : Mr.V.Balamurugan



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ORDER

This Civil Revision Petition is filed challenging the impugned order in IA.No. 4 of 2023 in O.S.No. 81 of 2018, dated 21.06.2023 passed by the learned District Munsif Court, Perundurai and to set aside the same.

2. The case of the petitioner/2nd defendant is that the respondent/plaintiff has filed the suit in O.S.No. 81 of 2018 before the District Munsif of Perundurai, for declaration, permanent injunction and mandatory injunction against the petitioner/2nd defendant. The defendants have contested the suit by filing written statement denying all the averments made in the plaint. In fact, summon was served to the petitioner/2nd defendant in the suit proceedings, but unfortunately at the time of serving the summons due to heavy pressure of work, the petitioner/2nd defendant misplaced the said notice and summon. Then the matter was posted on 26.06.2018. Due to the non appearance of the petitioner/2nd defendant on that date, the petitioner/2nd defendant was called set ex-parte before the Court below. The petitioner/2nd defendant came to know through the 1st defendant that the suit was filed by the respondent/plaintiff taken up for enquiry and he was set ex-parte as stated



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in the suit proceedings. Due to his illness and misplaced the summon, he could not appear before the Court below earlier. At this juncture, the petitioner/2nd defendant filed the application in IA.No. 4 of 2023 under Order 9 Rule 7 CPC seeking to aside the ex-parte order dated 26.06.2018 so as to enable him to participate in the suit proceedings and defend the suit. After perusing the records, the Court below dismissed the application by order dated 21.06.2023. Aggrieved by the same, the petitioner/2nd defendant has come forward with the present Civil Revision Petition.

3. On the other hand, the petitioner/2nd defendant was aware of the suit proceedings and purposely left the suit for ex-parte order on 26.06.2018. The petitioner/2nd defendant has filed the application after a lapse of five years to set aside the ex-parte order only his intention to drag on the proceedings. Now, the suit was posted for commencement of the trial. The first defendant wants to get adjournment for cross examination for several times and at that time, the petitioner/2nd defendant has filed the application seeking set aside the ex-parte order. Therefore, the respondent/plaintiff prays to dismiss the above Civil Revision Petition.

4. Heard the learned counsel for the petitioner and perused the



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records.
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5. On a perusal of the records, it reveals that the suit has been filed by the respondent/plaintiff against the petitioner/2nd defendant for declaration, permanent injunction and mandatory injunction. The contention of the petitioner/2nd defendant is that though he received the summon from the Court below, due to heavy work pressure, he misplaced the summons and therefore, he has failed to appear before the Court below on 26.06.2018 and exparte order was passed by the Court below against him. He came to know about the same recently and filed the application. The contention of the respondent/plaintiff is that the petitioner/2nd defendant being aware of the suit proceedings and purposefully left the suit for ex-parte on 26.06.2018. After a lapse of five years, the petitioner/2nd defendant has filed the application which is not maintainable in accordance with law.

6. On a further perusal of the impugned order dated 21.06.2023, it is seen that the suit was filed by the respondent/plaintiff herein for declaring the sale deed dated 12.09.2009 as fraudulent and also for permanent injunction regarding the suit property. While that being the case, summon



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was served on the 2nd defendant through Court and on 26.06.2018, he was called absent and set ex-parte. Thereafter, when the matter was posted for cross examination of PW1, the petitioner/2nd defendant has filed the application seeking to set aside the ex-parte order dated 26.06.2018 is not sustainable one and the same cannot be accepted by this Court. The only reason stated by the petitioner/2nd defendant is that due to misplacement of summons, he was unable to attend the hearing of the suit which resulted in an ex-parte order against him on 26.06.2018. The delay in the case on hand for coming out with an application to set aside the ex-parte order passed against the petitioner/2nd defendant is nearly about 5 years and the reason stated by the petitioner that due to misplacement of summons, the petitioner did not turn up to the Court proceedings, is vague and not acceptable the reason stated in the affidavit filed by the petitioner/2nd defendant.

7. When the petitioner/2nd defendant has not come out with a genuine case to set aside the ex-parte order against him, the Court below has held the decision of this Court in **Duraisamy v. Vasantha** reported in **2023 (1) CTC 444**, cannot allow the application in a routine manner which would definitely cause hardship to the respondent/plaintiff and furthermore it



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would also amount to abuse of process of Court. Therefore, this Court is not inclined to interfere with the impugned order passed by the Court below. There is no merit in the Civil Revision Petition and the same is liable to be dismissed.

8. With the above observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

31.08.2023

Speaking Order : Yes/No+
Neutral Citation : Yes/No
MSM

To

1. The District Munsif Court, Perundurai.
2. The Section Officer, V.R.Section, High Court of Madras.



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V.BHAVANI SUBBAROYAN, J

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