



C.R.P.(MD)No.297 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.297 of 2021

R.Ravichandran

.. Petitioner

Versus

P.Chellammal

.. Respondent

Prayer:- Petition filed under Section 115 of C.P.C., challenging the fair and decreetal order, dated 01.08.2018, made in I.A.No.76 of 2015 in O.S.No.368 of 2012, on the file of the Additional District Munsif Court, Dindigul.

For Petitioner : Mr.R.Saravanan

For Respondent : Mr.K.Manoharan

ORDER

This Civil Revision Petition has been filed for setting aside the fair and decreetal order dated 01.08.2018, made in I.A.No.76 of 2015 in O.S.No.368 of 2012, on the file of the Additional District Munsif Court, Dindigul.

2. The petitioner is the defendant in O.S.No.368 of 2012 filed by the respondent/plaintiff before the Additional District Munsif Court, Dindigul, for permanent injunction.



3. The suit is of the year 2012. The petitioner appeared at a particular point of time and thereafter, absented himself and subsequently. He was set *ex parte* on 25.07.2014. The operative portion of the impugned order, dated 01.08.2018, made in I.A.No.76 of 2015 in O.S.No.368 of 2012, reads as under:-

"6.Point:-

The petitioner contended that due to his ill health, he couldn't follow the case. From July 2014, he was affected by stomach pain. For getting treatment, he went to Kerala.

On the other hand, the respondent contended that the petitioner was appeared before this Court on 26.06.2012. After his appearance, he got thirty adjournments. He has to explain each and every day delay.

*On perusal of records, this Court noticed that the petitioner was appeared before this Court on 17.07.2012. After the appearance and after the enormous adjournments, on 11.03.2014, he was set *ex parte* for non filing of written statement. Subsequently on 25.07.2014, *ex parte* decree was passed.*

*The petitioner contended that from July 2014, he was affected by stomach pain. But he was set *ex parte* on 11.03.2014. The petitioner has not stated anything about his absence on 11.03.2014. Subsequent to the said date, the suit was adjourned to 21.04.2014, 18.07.2014 and 25.07.2014. On 11.03.2014 itself, adverse order passed against the petitioner. But the petitioner simply claimed that he was affected by stomach pain from July 2014.*

Learned counsel for the respondent contended that the petitioner has not substantiated his version through evidence. On perusal of records, this Court noticed that no evidence to show the petitioner's illness and treatment available in the records. In the absence of such evidence, the petitioner's



C.R.P.(MD)No.297 of 2021

version cannot be accepted. Considering the absence of evidence in respect of the petitioner's claim, this Court not inclined to allow this petition.

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4. It is noticed that the suit is filed only for a bare injunction. The petitioner has also not properly explained the reasons as required under law for condoning the delay of 75 days in filing the application to set aside the *ex parte* decree.

5. In view of the above, I do not find any merit in the present Civil Revision Petition. Therefore, the Civil Revision Petition is liable to be dismissed. No costs. However, the rights of the petitioner to establish his right over the property stands preserved subject to law of limitation.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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07.03.2023

To

The Additional District Munsif,
Dindigul.



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C.R.P.(MD)No.297 of 2021

C.SARAVANAN, J.

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Order made in
C.R.P.(MD)No.297 of 2021

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