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C.R.P.No.2887 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2887 of 2022
and C.M.P.No.15709 of 2022

Mariyappan ... Petitioner

-Vs-

Thaiyammal ... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the docket order dated 28.08.2019 made in Unnumbered I.A.No... of 2018 in O.S.No.405 of 2004 on the file of the District Munsif Court, Gobichettipalayam.

For Petitioner : Mr.N.Kathiresan

For Respondents : Mr.C.Vigneshwaran

ORDER

This revision arises against the order of the learned District Munsif, Gobichettipalayam, dated 28.08.2019 refusing to number the application filed to set aside the exparte decree dated 13.11.2018.

2. O.S.No.405 of 2004 was originally presented before the learned Subordinate Judge, Gobichettipalayam as O.S.No.53 of 1996. In the said suit, the first defendant has filed a written statement and the matter was pending



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consideration. Thereafter, the suit stood transferred due to enhancement of pecuniary jurisdiction to the file of the District Munsif, Gobichettipalayam. Pending suit, the first defendant died and his legal heirs were brought on record as respondents 2 to 21. As they did not contest the proceedings, an exparte decree was passed on 13.11.2018. To set aside the exparte decree, the petitioner filed an application on 10.12.2018. The said application was dismissed as not maintainable on the following terms:

" Upon perusal of judgment and decree and material records, the suit was decreed as merits after contest as pending issues and findings rendered after full trial. Hence this petition is not maintainable."

3. I went through the judgment and decree in O.S.No.405 of 2004 dated 13.11.2008, which was placed before me by the learned counsel for the petitioner. On perusal of the same, it is clear that the Court had recorded that defendants 2 to 21 had been set exparte and thereafter the suit had been decreed. A reading of Order XXVII Rules 2 and 3 of the Civil Procedure Code would make it clear that, in order for the Court not to proceed under Order IX Rule 13 and to render a judgment on the merits of the case, there has to be some evidence on record let in by the party who has defaulted.



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4. A perusal of the typed set of papers shows that the Court had examined only Thayammal, the plaintiff who had marked Exs.A1 to A8. The fact that a detailed judgment had been rendered by the learned District Musnif does not convert a judgment, which is otherwise an exparte one, into one on merits. In order to be a judgment on merits as discussed above, there must be some evidence on the side of the defendants. When the defendants have remained exparte, there is no question of them letting in any evidence.

5. Therefore, I am of the view that the application filed to set aside the exparte decree was very much maintainable. The order of the learned Judge holding that it is not so, is liable to be interfered with and accordingly it is interfered with. The order dated 28.08.2019 is set aside and the C.R.P is allowed. No costs. The learned District Munsif, Gobichettipalayam is directed to number the application and issue notice to the plaintiff and thereafter pass orders on the same. Consequently, connected miscellaneous petition is closed.

25.04.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

Note to Registry:

The original application filed under Order IX Rule 13 C.P.C which has been enclosed in the typed set of papers shall be returned the learned counsel for the petitioner after obtaining due endorsement.



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V. LAKSHMINARAYANAN, J.

KST

To

The District Munsif
Gobichettipalayam.

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