



C.M.A.No.2953 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 07.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No.2953 of 2021

and C.M.P.No.16887 of 2021

R.Selvaraj

...Appellant/Petitioner/Defendant

Vs.

R.Rangaswamy

...Respondent/Respondent/Plaintiff

Prayer: This Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(r) of Civil Procedure Code, to set aside the Fair and Final Order dated 21.12.2020 passed by the learned V Additional District Judge, Coimbatore in I.A.No.3 of 2020 in O.S.No.178 of 2018.

For Appellant : Mr.L.Mouli

For Respondent : Mr.P.Saravana Sowmiyan



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JUDGMENT

The above Civil Miscellaneous Appeal is directed against the order passed by the Vth Additional District Judge, Coimbatore dated 21.12.2020 in I.A.No.3 of 2020 in O.S.No.178 of 2018.

2. The suit in O.S.No.178 of 2018 is filed by the respondent as plaintiff for partition and permanent injunction. The appellant herein is the defendant in the above suit. Since the defendant failed to appear, an ex-parte order was passed against him. Thereafter, the appellant/defendant filed an application in I.A.03 of 2020 under Order 9 Rule 13 and Section 151 of CPC to set aside the ex-parte order passed against him on 26.03.2019. In the said application, it is stated that the suit was originally filed before the Principle Subordinate Court, Coimbatore and thereafter, the suit was returned to be presented before the appropriate forum. Accordingly, the plaint was represented and renumbered before the Vth Additional District Judge, Coimbatore. The petitioner was under the impression that after receiving the entire back papers from the Principle Subordinate Court, the same will be posted for filing the



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written statement on his side. Hence, the petitioner did not file the written statement. However, in the 2nd week of April, 2019, he was informed by one of his relative that the suit was decreed in favour of the plaintiff and the defendant was set ex-parte in the above suit. The petitioner through his Advocate came to know that an ex-parte decree was passed against him on 26.03.2019. The said ex-parte decree was against the petitioner/defendant, on the account of non filing of written statement. Therefore, the petitioner would submit that he has valid defence in the suit and non filing of the written statement is neither wilful nor wanton. Under such circumstances, he prays for setting aside the ex-parte decree passed against him on 26.03.2019.

3. The said claim was resisted by the respondent/plaintiff stating that the said partition suit was originally filed on the basis of a registered Will dated 27.12.1984 before the Principle Subordinate Court, Coimbatore in O.S.No.1307 of 2013 and the same has been transferred to the V Additional District Court, Coimbatore. It is further submitted that the petitioner/defendant admitted the execution of the Will by his Grandfather in his written statement filed on 12.02.2014 itself. On 07.10.2014, the petitioner



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filed his additional written statement questioning the pecuniary jurisdiction. Accordingly, the suit was transferred to the Vth Additional District Court, Coimbatore. The further contention of the respondent/plaintiff is that the above application is filed by the petitioner with ulterior motive to drag on the proceedings and deliberately leaving the Court to pass an ex-parte decree, has come forward with the said application. Hence, there is no merit in the said application and the same is liable to be dismissed.

4. The trial Court after considering the averments made in the above application, counter affidavit and arguments advanced on both sides, rightly dismissed the said application by its order dated 21.12.2020.

5. The learned counsel appearing for the appellant/defendant would submit that no notice was served on the appellant/defendant after the said suit was transferred from the Principle Subordinate Judge and therefore, he was unable to appear and file his written statement. The said application seeking to set aside the ex-parte decree was filed in time and there is no delay. However, the trial Court without considering the above aspects erroneously



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dismissed the application. It is submitted that if the said application is not allowed, the appellant/defendant would put to great hardship. Hence, prays for setting aside the order passed in I.A.No.3 of 2020 passed by the Vth Additional District Judge, Coimbatore.

6. On the other hand, the learned counsel appearing for the respondent/plaintiff would submit that, there is no merit in the above application. In fact, the appellant/defendant in his written statement has admitted that the plaintiff and the defendant are entitled for equal share based on the Will and the property is not available for partition during the life time of their parents. He would further submit that the said facts were observed by the trial Court in the impugned order and therefore, there is no merit in this application and the same is liable to be dismissed.

7. Heard both sides. Records perused.

8. The application in I.A.03 of 2020 was filed by the defendant in the suit in O.S.178 of 2018 for setting aside the impugned order passed by the



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trial Court in I.A.No.03 of 2020. On perusal of the affidavit, it is seen that the explanation given by the petitioner is unsustainable for the reason that the defendant had made appearance and filed his written statement before the Principle Subordinate Court. Therefore, the defendant must be more diligent to follow the case. Moreover, the findings given by the trial Court that even on merits, the defendant has not set up a valid defence for resisting the suit, which is not found to be perverse. Moreover, the explanation given by the petitioner for setting aside the ex-parte order is insufficient. Moreover, in the written statement, the petitioner/defendant has admitted that the plaintiff and defendant are having equal share in the property as per the Will. The trial Court also passed the judgment and decree on the above terms. Therefore, even on merits, the said petition is unsustainable. Accordingly, this Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.02.2024

mac/vsn

Internet:Yes/No

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Index: Yes/No
Speaking/Non-speaking order

K.GOVINDARAJAN THILAKAVADI, J.

mac/vsn

To

1. V Additional District Judge, Coimbatore
2. The Section Officer,
VR Section,
High Court, Madras.

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