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C.R.P.(PD)Nos.4874 and 4875 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)Nos.4874 and 4875 of 2024

Mrs.Lakshmi

....

Petitioner in both
C.R.P.'s

Vs

1. K.Saravanan

2. Mr.VargheseVehoor

....

Respondents in both
C.R.P.'s

PRAYER in both C.R.P.'s: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal order dated 03.04.2024 made in I.A.Nos. 2 and 3 of 2023 in O.S.No.8309 of 2022 on the file of the XXII Additional City Civil Court at Chennai and allow this civil revision petition.

For Petitioner : Mr. P.Gunaraj
(in both C.R.P.'s)

COMMON ORDER

These two civil revision petitions arises against the order passed by the learned XXII Additional City Civil Court, Chennai in I.A.Nos. 2 and 3 of



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2023 in O.S.No.8309 of 2022 dated 03.04.2024,

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2. O.S.No.8309 of 2022 was originally presented before this Court as C.S.No.855 of 2009. In the said suit, the relief of partition and separate possession was sought for. In so far as the 'B' Schedule mentioned property is concerned, there is no dispute. The defendants agreed that the plaintiff will be entitled to a share in the 'B schedule property'. In so far as the 'A' schedule mentioned property is concerned, the 1st defendant pleaded that he had got the registered settlement deed dated 14.05.1981 in his favour. The 2nd defendant, who was a tenant in the property, filed a separate written statement. When the matter was pending before this Court, plaintiff's evidence was completed and the defendant deposed as D.W.1 on 05.06.2017. The matter had been adjourned for cross examination for several dates, but he was not cross examined by the Plaintiff.

3. On account of enhancement of pecuniary jurisdiction of the City Civil Court, the suit was not called before the High Court. It was taken up before the City Civil Court and decreed exparte. Thereafter, the 1st defendant came to know that a decree had been passed in the suit. It came to his knowledge when a notice was served on him on 15.09.2023 in the final decree petition in I.A No.1 of 2023. Immediately, he verified the records and came to know



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that the suit has been transferred from High Court to XXII Additional City Civil Court and was renumbered. He pleaded that neither himself nor his counsel had been put on notice after the suit had been transferred. He pleaded that there was no cordial relationship between the 2nd defendant and himself. Therefore, even he did not inform him about the transfer of the proceeding. He further pointed out that the counsel, who had appeared on his behalf before the High Court, had also not been served with the notice regarding the transfer. Therefore, he sought for condonation of delay of 131 days in filing the application for setting aside the ex parte decree also for setting aside the ex parte decree.

4. The learned Trial Judge numbered both the condone delay as well as the setting aside application as I.A.Nos.2 and 3 of 2023 respectively. She received a counter from the civil revision petitioner/plaintiff. In the counter, it was pointed out that the proceedings had been adjourned for evidence from 2011 till 2017 and that notice had been taken to the 1st defendant and yet he did not appear before the Court. Therefore, the plaintiff pleaded that the application to set aside the ex parte decree does not deserve any consideration.

5. When the matter was taken up for arguments, the learned trial Judge has recorded that the respondents have no serious objection to allow the



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applications and consequently allowed the applications. Against the said orders the present civil revisions have been filed.

6. I heard Mr.P.Gunaraj for the civil revision petitioner.

7. Mr.P.Gunaraj states that the junior counsel, who was representing the plaintiff before the trial Court on 03.04.2024, did not tender no objection to allow the said applications. He adds that the 1st defendant had been put on notice by the Plaintiff. Therefore, the reason given in the affidavit does not hold any merit. Hence, he seeks for revision of the order.

8. I have considered the submissions of the Mr.P.Gunaraj and perused the records.

9. It has been settled at least a century ago that the recording by a Judge of a proceeding before him/her cannot become the subject matter of controversy before the appellate Court. See, ***R.M.K.R.M.Somasundaram Chetty Vs. M.R.M.V.L. Subramanian Chetty (AIR 1926 PC 136)***. This view taken by Privy Council was confirmed by the Supreme Court in ***State of Maharastra Vs.Ramdas Shrinivas Nayak & Ors. (1982 2 SCC 463)***.

Therefore, I cannot countenance the plea of Mr.P.Gunaraj that the counsel



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who appeared before the learned Judge did not tender no objection.

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10. Apart from that a perusal of the counter affidavit by the plaintiff shows that the notice had been sent to the 1st defendant, intimating him about the transfer of the suit, had been returned as “No such person”. This shows that notice had not been served on the 1st defendant. After the transfer of the suit either on account of pecuniary jurisdiction or territorial jurisdiction, unless and until, the parties are put on notice, it is not possible to expect them to appear before the Court. Even on the merits I do not find any error in the order of the learned Judge in condoning the delay and setting aside the exparte decree.

11. These Civil Revision Petitions are dismissed. At this stage, I have to take note of the fact that the Suit is pending for 15 years. This is simple suit of Partition and hence interest of justice, requires that the suit be disposed of as expeditiously as possible. Therefore, the learned XXII, Additional City

V. LAKSHMINARAYANAN, J
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Civil Court is requested to dispose of the suit within three months from today.



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Post 'for reporting compliance' on 31.03.2025.

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02.12.2024

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

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To

The District Munsif-Cum-Judicial Magistrate,
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