



C.R.P(MD)No.1713 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 19.11.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.1713 of 2023

and

C.M.P(MD)No.8550 of 2023

M.Seethalakshmi

... Petitioner / Defendant

Vs

Selvarani

... Respondent / Plaintiff

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to call for the records relating with the fair and executable order dated 31.03.2023, made in I.A.No.1 of 2020 in O.S.No.92 of 2011 on the file of Principal Subordinate Court, Srivilliputhur and set aside the same.

For Petitioner : Mr. R.Suriyanarayanan

For Respondent : Mr.M.Thirunavukarasu

ORDER

This Civil Revision Petition is filed to call for the records relating with the fair and executable order dated 31.03.2023, made in I.A.No.1 of 2020 in O.S.No.92 of 2011 on the file of Principal Subordinate Court, Srivilliputhur and set aside the same.



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2. The facts in brief is that the suit in O.S.No.92 of 2009 was filed by the respondent herein against the revision petitioner namely Seethalakshmi for declaration that the suit property exclusively belong to her and for consequential direction to surrender the vacant possession, to pay a sum of Rs.2,000/- towards damages for use of occupation and for future damages on the very same rate, till the date of surrender of vacant possession. The revision petitioner appeared through an advocate and filed written statement. Issues were framed and on the side of the plaintiff, three witnesses were examined, 18 documents were marked, apart from that Ex.X1 is also marked. On the side of the revision petitioner, she was examined as D.W.1. Four documents were marked on her side. At the conclusion of the trial process, the suit was decreed in part and directed the revision petitioner to vacate the premises and surrender the vacant possession within a period of three months. Relief in respect of damages was dismissed.

3. Against which the revision petitioner filed I.A.Nos.1 and 2 of 2020 stating that the suit was decreed ex parte and there is a delay of 94



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days in filing the set aside petition and another one I.A. to set aside the ex parte decree passed on 10.09.2019. Both the applications were heard together by the trial Court and by a common order, both were dismissed. Against which this revision petition is preferred against the order passed in I.A.No.1 of 2020.

4. Heard both sides.

5. A preliminary objection was made by the respondent as to the maintainability of the revision stating that it is not an ex parte judgment. A judgment was passed on merits. As mentioned above on the side of the plaintiff three witnesses have been examined. She was examined as P.W. 1. She also marked 18 documents. The question of passing an ex parte decree does not arise at all and the learned counsel for the respondent would rely upon a judgment of this Court reported in **2001 1 LW 167** in the case of **Arumugha Gounder and another Vs. Palaniammal and others**, and filed a synopsis indicating the dates and events. By pointing out the dates and events, he would submit that the plaintiff's side evidence was closed on 17.07.2017 and on 30.08.2017 revision petitioner



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filed I.A.No.690 and 691 of 2017 to recall and re-examine the plaintiff.

Those IAs were dismissed and later posted for defendant side evidence.

On 31.08.2018, defendant side evidence was closed. Later on application, D.W.1, was examined. Later it was posted for cross examination. she failed to appear inspite of repeated adjournment and finally it was closed on 27.08.2019. On 05.09.2019, plaintiff side arguments was heard and there was no argument on the side of the defendant. Judgment was pronounced on 10.09.2019. The only remedy available to the petitioner is to file only an appeal against the judgment, since the judgment is rendered under Order 17 Rule 3 of C.P.C., and not under Order 17 Rule 2 of C.P.C.

6. Per contra, learned counsel for the revision petitioner would submit that two options are available to him. Either to file a revision on I.A.No.1 of 2022 or to file an appeal. Now he has chosen the first option which cannot be considered as illegal.

7. Now we will consider the short point. Before that we will go through the judgment of trial Court. The preamble portion of the



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judgment reads that on both sides advocate appeared. They were heard before the pronouncement of judgment. The contention raised by the revision petitioner was considered. All the issues were answered in the light of the evidence let in. No where it is stated in the judgment that the defendant, inspite of repeated opportunity, was not subjected herself for cross examination. But on the contrary, judgment went on as if evidence were let in on both sides. So it can be considered as a judgment on merits, but as mentioned above, the respondent herein by filing the dates and events has stated and narrated the record of proceedings.

8. Whatever it may be we need not enter into with the issue but as mentioned above it is a judgment of merits. The only remedy available to the revision petitioner is to file an appeal and certainly not a petition under Section 5 of limitation Act to set aside the ex parte, treating it as ex parte decree. At this juncture, learned counsel for the petitioner would submit that liberty may be granted to him to file an appeal against the judgment. No doubt that in the event of filing the appeal against the judgment dated 10.09.2019, limitation will come into play. It appears that the revision petitioner bonafidely prosecuted the I.A.Nos.1 and 2 of



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2020 and this revision petition. So the time spent by the revision petitioner in prosecuting these matters can be excluded at the time of filing the appeal, under Section 14 of the limitation Act.

9. With the above said observation and liberty, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

19.11.2024

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

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To

- 1.The Principal Subordinate Court, Srivilliputhur.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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