



C.R.P.(MD)No.2054 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.03.2024

Delivered on : 26.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

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1.Murugeswari

2.Parameswari

3.Pandiamal

: Petitioners/Appellants/
Petitioners/Defendants

Vs.

S.P.Sivaramakrishnan

: Respondent/Respondent/
Respondent/Plaintiff

Prayer : This Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and decreetal order, dated 06.03.2019 in C.M.A.No.6 of 2016 in I.A.No.76 of 2011 in O.S.No.935 of 2009 passed by the II Additional Sub Court, Madurai.

For Petitioners : Mr.M.Kumar

For Respondents : Mr.S.Srinivasa Raghavan



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ORDER

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The Civil Revision Petition is directed against the order passed in C.M.A.No.6 of 2016, dated 06.03.2019 on the file of the II Additional Sub Court, Madurai, confirming the order passed in I.A.No.76 of 2011 in O.S.No.935 of 2009, dated 15.02.2016 on the file of the Principal District Munsif Court, Madurai Town, dismissing the petition filed under Order IX Rule 13 of the Code of Civil Procedure.

2. The revision petitioners are the appellants/defendants. The respondent as plaintiff has filed the suit in O.S.No.935 of 2009 against the revision petitioners claiming permanent injunction restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the suit property. Since the defendants have not filed their written statement, they were set ex-parte and an ex-parte judgment and decree came to be passed on 26.08.2010.

3. The defendants by alleging that the suit summons were not served on them, have filed a petition under Order IX Rule 13 of C.P.C., for setting aside the ex-parte decree, dated 26.08.2010 in I.A.No.76 of 2011



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on the file of the Principal District Munsif Court, Madurai Town. The respondent/plaintiff has filed the counter statement raising serious objections. During enquiry, the revision petitioners/defendants have examined the fourth and third defendants as P.W.1 and P.W.2 respectively and exhibited six documents as Ex.P.1 to Ex.P.6. The respondent/plaintiff has adduced neither oral nor documentary evidence. The learned District Munsif, upon considering the evidence available on record and on hearing the arguments of both the sides, has passed the order, dated 15.02.2016, dismissing the petition. Aggrieved by the order of dismissal, the defendants have preferred an appeal in C.M.A.No.6 of 2016 and the learned II Additional Sub Court, Madurai, upon considering the materials available on record and on hearing the arguments of both the sides, has passed the impugned order, dated 06.03.2019, dismissing the appeal and thereby confirming the dismissal order passed by the trial Court. Aggrieved by the order of dismissal, the present revision came to be filed.

4. The case of the revision petitioners/defendants 2 to 4 in the petition filed under Order IX Rule 13 of C.P.C., is that they are the owners of the property in Survey Nos.88/9 and 88/10 in Thathaneri, Madurai; that since the respondent attempted to trespass into their properties, they have



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sent a lawyer notice, dated 17.12.2010 requesting them not to interfere with their possession and enjoyment of their properties; that the respondent having received the said notice, sent a reply notice, dated 23.12.2010; that the respondent in the reply notice stated that he has already filed a suit in O.S.No.935 of 2009 for permanent injunction and that the defendants engaged three advocates and since they have not filed the written statement, an ex-parte decree was passed; that the Court summons in O.S.No.935 of 2009 were not at all served on the defendants 2 to 4; that they have not instructed any advocate to appear on their behalf; that after receiving the said reply notice, they have verified the matter and found that a huge fraud was committed upon the Court and ex-parte decree was obtained by the respondent fraudulently and that therefore, they were constrained to file the above application for setting aside the ex-parte decree within 30 days from the date of receipt of reply notice, the date on which, they came to know about the ex-parte decree and that the petitioners will be put to heavy loss and hardship, if the ex-parte decree is not set aside.

5. The defence of the respondent/plaintiff is that the above application filed under Order IX Rule 13 of C.P.C., is barred by time; that



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the allegations of the defendants that the Court summons were not served on them and that they have not instructed any advocate to appear on their behalf are all false and fraudulent; that the plaintiff is the owner of the properties in Survey No.88/7 of Thathaneri Village, Madurai and the said property lies on the northern side of the property of the petitioners; that the plaintiff had taken summons to the defendants and he has also sent private notice by RPAD as per the order of the trial Court; that the Court notice was intimated to the petitioners, but they have wantonly maneuvered to return the private notice; that the defendants have engaged separate advocates on 08.01.2010 and obtained adjournments for six months to file written statement; that since they have not filed written statement, ex-parte decree was passed on 26.08.2010; that the contention of the defendants that they have got knowledge of the ex-parte decree only after receiving the reply notice is false and untenable and that therefore, since their application is clearly barred by time, the same is liable to be dismissed with costs.

6. Admittedly, the plaintiff has laid the above suit only for bare injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property.



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7. The main contention of the defendants 2 to 4 is that they have not received the suit summons in O.S.No.935 of 2009 and they have not engaged any advocate to represent them before the trial Court. It is their further contention that only after receiving the reply notice from the plaintiff, they came to know about the filing of the suit and ex-parte decree.

8. It is pertinent to note that the third defendant while deposing as P.W.2 would specifically admit that the Court summons was served to her address and that the other defendants were also residing in the same house at that time. The learned trial Judge considering the trial Court records has specifically observed that the suit summons was served on the first defendant and with respect to the other defendants, summons were affixed. It is pertinent to note that three advocates, namely, S.Ganapathy Varada Subramaniam, P.Alagesan and S.Karunanidhi have filed vakalat for the defendants 2 to 4 respectively on 08.01.2010.

9. As rightly pointed out by the learned counsel for the plaintiff, during cross examination of P.W.2, she had denied the signature found in



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the vakalat filed by the earlier counsel, which is now disputed by the defendants and she had also denied the signature found in the vakalat filed by the present counsel, who filed the above petition under Order IX Rule 13 of C.P.C. Though they have alleged that they have not engaged the counsels and disputed the signatures found in the vakalat filed by the three counsels, they have not chosen to take any steps to prove that the signatures found in the vakalat were not that of their signatures. Moreover, even after coming to know that three counsels have entered in the appearance on their behalf, they have not sent any notice, nor taken any action against the said advocates till now.

10. Considering the above, this Court has no hesitation to hold that the defendants 2 to 4 have miserably failed to prove the allegations raised in their affidavit filed in support of the above petition. Since the ex-parte judgment and decree came to be passed on 26.08.2010, the application under Order IX Rule 13 of C.P.C., filed on 10.01.2011 is hopelessly barred by time. Since the defendants have entered into appearance through counsels and obtained time for filing written statement, they cannot be allowed to say that they came to know about the decree only by reply notice sent by the plaintiffs and that therefore, the contention that the petition is not barred by time cannot be sustained.



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WEB COPY 11. Considering the above, the trial Court as well as the appellate Court have rightly come to a decision that the petition filed under Order IX Rule 13 of C.P.C., is barred by time and that therefore, the petitioner are not entitled to get the relief claimed. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

12. In the result, the Civil Revision Petition is dismissed. No costs.

26.04.2024

NCC :yes/No
Index :yes/No
Internet :yes/No
das

To

1.The II Additional Sub Judge, Madurai.

2. The Principal District Munsif,
Madurai Town.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Pre-delivery order made in
C.R.P.(MD)No.2054 of 2019

Dated : 26.04.2024