



C.R.P.(MD)No.2093 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.01.2024

Pronounced on : 06.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2093 of 2019

and

C.M.P.(MD)No.10900 of 2019

S.Kalavathu

... Petitioner/
Petitioner/
19th Defendant

Vs.

Arulmigu Mariamman Vignanam,
Samayapuram,
represented by its Executive Officer,
Mannachanallur Taluk,
Trichy District.

... Respondent/
Respondent/
Plaintiff

Prayer : This Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 05.08.2019 in I.A.No.1 of 2019 in O.S.No.13 of 2018 on the file of Subordinate Court, Lalgudi and allow this Civil Revision Petition.



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For Petitioner : Mr.S.Vinod Sathya Lazar

For Respondent : Mr.K.Govindarajan

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.1 of 2019 in O.S.No.13 of 2018 dated 05.08.2019 on the file of the Subordinate Court, Lalgudi, dismissing the application filed under Order 9 Rule 7 of the Code of Civil Procedure.

2. The respondent as plaintiff has filed the above suit seeking recovery of possession directing the defendants 1 to 21, 23 to 26 and 27 to surrender possession of the suit property after removing the unauthorized construction made by the 21st defendant and for payment of past and future profits and for permanent injunction restraining the 22nd defendant/ Government of Tamil Nadu from issuing C-Form license to the defendants 21 and 27. The revision petitioner, who is the 19th defendant, after the receipt of suit summons, has not turned up for the first hearing on 19.07.2000 and hence, she was called absent and set *ex parte*. Since the suit is pending, the revision petitioner/19th defendant has filed an



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application under Order 9 Rule 7 C.P.C. for setting aside the *ex parte* order dated 19.07.2000.

3. The case of the revision petitioner/19th defendant is that the revision petitioner/19th defendant has purchased 8.76 acres of land in Old S.F.No.15, New S.F.No.12 on 27.03.1979 along with her father Subramaniyan and mother Smt.Lalitha Subramaniyan, that they have been in possession and enjoyment of the property since their purchase, that her parents were shown as defendants 17 and 18 in the above suit, that her father died on 22.12.1999 and her mother died on 12.09.2006, that the revision petitioner/19th defendant is the only legal heir and she is the sole legal heir to inherit the property, that the above case has been transferred to Lalgudi and sent for mediation, that the revision petitioner/19th defendant has not received any communication with regard to the transfer or the mediation date and as such, she could not appear before the Court, that her advocate has written a letter about the transfer of suit to Lalgudi, that even that letter has not been received by her, that when she approached her lawyer, she came to know about the *ex parte* order, that she was set *ex parte* on 19.07.2000 and that since the revision



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petitioner/19th defendant got a good case on merits, she was constrained to file the above application for setting aside the *ex parte* order. The respondent/plaintiff has filed a counter statement stating that the averments raised in the affidavit are all false, that the revision petitioner/19th defendant has not filed any document in support of her claim, that when the revision petitioner/19th defendant has claimed title to the suit property, the above evasive reasons clearly proved that the revision petitioner/19th defendant only in order to drag the matter let the suit for *ex parte*, that the above matter was posted for further cross-examination and that therefore, the application is liable to be dismissed. The learned Subordinate Judge, after enquiry, has passed the impugned order dated 05.08.2019 dismissing the application. Aggrieved by the order of dismissal, the present revision came to be filed.

4. The case of the respondent/plaintiff is that the suit property is belonging to the respondent/plaintiff Idol, that it was originally a Minor Inam land under title deed No.1114, that the suit property was granted to the respondent/plaintiff Idol as a Devadhayam Grant and the same was granted for the purpose of rendering Sripatham Thangi Service to the



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respondent/plaintiff Idol, that after the abolishment of Minor Inam, suo moto proceedings were initiated by the Settlement Tahsildar in Lalgudi Taluk and a conditional patta was granted to the ancestors of the defendants 1 to 16 under Section 8(2)(ii) of the Act 30 of 1963 subject to the condition of rendering Sripatham Thangi Service to the respondent/plaintiff Idol, that the ancestors of the defendants 1 to 16 were only allowed to remain in possession of the suit property so long as they render service and so long as the property is not alienated, that though the possession of the ancestors of the defendants 1 to 16 is only permissive in nature, they have alienated the property in favour of the defendants 17 to 19, who in turn alienated portion of the suit property in favour of the defendants 20 and 21, that the above sales are invalid and void and the same are not binding on the respondent/plaintiff and that therefore, the respondent/plaintiff was constrained to file the above suit for recovery of possession.

5. In pursuance of the direction of this Court, the learned Subordinate Judge, Lalgudi, has submitted a report stating that the suit in O.S.No.13 of 2018 is pending for further *ex parte* plaintiff side evidence, that the defendants 2, 22 to 25 and 27 were set *ex parte* on 13.07.2023 and



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that the 27th defendant has filed a petition in I.A.No.3 of 2023 for setting aside the *ex parte* order and the same is pending.

6. It is not in dispute that the suit was originally pending before the Subordinate Court, Trichy in O.S.No.349 of 2000 and after the constitution of a new Court, the same was transferred to the Subordinate Court, Lalgudi and was taken on file in O.S.No.13 of 2018. It is also not in dispute that pending suit, the revision petitioner/19th defendant's father-17th defendant and mother-18th defendant died on 22.12.1999 and 12.05.2006 respectively.

7. The learned Subordinate Judge, by specifically observing that the above application has been filed after the lapse of 19 years and that the revision petitioner/19th defendant has not shown any cause for not appearing on the particular day, dismissed the application.

8. Order 9 Rule 6 C.P.C. provides that when a suit is called on for hearing, if the plaintiff appears and the defendant does not appear and if it is proved that the summons were duly served, the Court may make an



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order that the suit be heard *ex parte*. Order 9 Rule 7 C.P.C. provides that if at an adjourned hearing, the defendant appears and shows good cause for his previous non-appearance, he can be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

9. The Hon'ble Supreme Court, in ***Arjun Singh Vs. Mohindra Kumar and others*** reported in ***AIR 1964 SC 993***, has laid down that Order 9 Rule 7 C.P.C. does not put an end to the litigation nor does it involve the determination of any issues in controversy in the suit. It is settled law that under Rule 6 if the defendant wants to proceed from the stage already reached, he will have an absolute right to do so without obtaining any permission to take part in the proceedings from that stage as well, but at the same time, when the defendant requires the Court to retrace its steps and desires to be relegated back to the position in which he would have been put if he would have appeared on the previous hearing, so that the proceedings in his absence could be reopened, he will have make an application as envisaged under Rule 7. In the case on hand, admittedly, the revision petitioner/19th defendant has not taken part in the proceedings and filed the above application seeking orders for setting aside the *ex parte* order passed on 19.07.2000. It is also settled law that there is no period of



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limitation for filing an application under Order 9 Rule 7 C.P.C., but the same cannot be entertained, if he filed the application after the conclusion of arguments in the main suit. As already pointed out, the suit is still pending on the file of the Subordinate Court, Lalgudi.

10. As rightly contended by the learned counsel appearing for the revision petitioner, the respondent/plaintiff has not raised any serious objection in the counter objections filed before the trial Court.

11. Considering the entire facts and circumstances and also taking note of the fact that the suit is still pending and also the case of the revision petitioner/19th defendant, this Court is of the view that the revision petitioner/19th defendant should be given one more opportunity to defend the suit, but on terms and conditions.

12. Considering the quantum of delay in filing the above application and taking note of the facts and circumstances of the case, this Civil Revision Petition will be allowed on payment of cost of **Rs.50,000/- (Rupees Fifty Thousand only)** by the revision petitioner/19th defendant to



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the respondent/plaintiff temple on or before 26.03.2024, failing which, the revision petition shall stand dismissed automatically. In case if the *ex parte* order is set aside, then the revision petitioner/19th defendant is directed to file written statement within a period of two weeks from 26.03.2024. The learned Subordinate Judge, Lalgudi, is hereby directed to conduct enquiry in I.A.No.3 of 2023 and dispose of the same within a period of two weeks from 26.03.2024. Thereafter, the learned Subordinate Judge, Lalgudi, is directed to frame necessary issues in the suit in O.S.No. 13 of 2018 and proceed with the trial and dispose of the suit within a period of three months thereafter. Consequently, connected Miscellaneous Petition is closed.

06.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

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



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)No.2093 of 2019
and
C.M.P.(MD)No.10900 of 2019

Dated : 06.03.2024