

A NO. 2879 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-08-2025

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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

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A No. 2879 of 2025

in C.S.No.33 of 2023

Gainedy Kodanda Rama Rao
S/o.Gainedy Venkata Rao, Door No.17/11/6, Flat No.302, 3rd
Floor, Official Apartments, Maharanipeta, Visakhapatnam, Andhra
Pradesh 530 002.

Applicant(s)

Vs

Uma Suresh
W/o.Late P.Suresh Chander Pal, Old No.7, New No.14, 2nd Main
Road, Ram Nagar, Peravallur, Chennai 600 082.

Respondent(s)

For Applicant(s): Ms.T.Haripriya

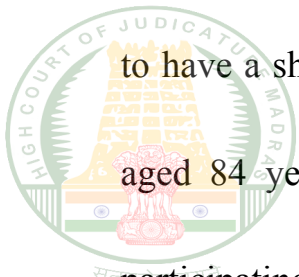
For Respondent(s): Mr.N.V.M.Margandeyan

ORDER

The present application has been filed to set aside the ex-parte decree dated 05.01.2024 passed in C.S.No.33 of 2023.

2. Heard Ms.T.Haripriya, learned counsel for the applicant and Mr.N.V.M.Margandeyan, learned counsel for the respondent.

3. Learned counsel appearing for the applicant would submit that this Court had passed an ex-parte decree in favour of the respondent. He would submit that the respondent had suppressed a decree of partition in which a decree had been passed in favour of the applicant



to have a share in the suit scheduled property. He would further submit that th t is

aged 84 years and is a non-resident of India, residing at USA. He had been diligently

participating in the proceedings and unfortunately he was not able to file his written

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statement within time and thereafter, an ex-parte decree had been passed against the

applicant. He would submit that the applicant has a fair chance of success in the suit, in view

of the judgment and decree granted in his favour in a suit for partition initiated against the

respondent. He would further submit that he has no intention to delay the proceedings and if

the ex-parte order is set aside, he will immediately participate in the proceedings.

4. Countering his arguments, Mr.N.V.M.Margandeyan, learned counsel for the respondent

would submit that the applicant herein had participated in the suit proceedings and had even

filed his counter in the injunction application as early as on 05.04.2023, thereafter, for his

non-filing of his written statement, the matter has been listed under the caption for

“undefended board” and he was set ex-parte by an order dated 11.10.2023 and finally an ex-

parte decree came to be passed on 05.01.2024.

5. He would submit that the affidavit filed in support of this application is bereft of any

material facts. He would submit that even though, the applicant is a non-resident of



India, he had been staying only in India for a very long time and he was not

enough in prosecuting this suit. If his passport is produced, it will show to light the

falsehood of the affidavit filed by the applicant. Therefore, he would pray this Court to

dismiss the application.

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6. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

7. The learned counsel for the applicant was directed to produce the passport of the applicant to verify the statement that had been made by the respondent. From the copy of the passport that was produced before this Court, it could be seen that the applicant had left India on 03.10.2023 and had returned back to India on 30.11.2023. The applicant had entered appearance and had also contested the injunction application filed in O.A.No.116 of 2023 by filing a counter affidavit sworn on 05.04.2023. Thereafter, he had failed to file his written statement and was set ex-parte by order of this Court on 11.10.2023. Further proceedings had been proceeded and the suit came to finally decreed ex-parte on 05.01.2024. Even though the applicant had admitted that there had been a delay in filing the written statement, he had not given any reason whatsoever for the reasons that has been caused in filing the written statement. On 06.03.2023, the learned counsel for the applicant had undertaken to file



Vakalath and thereafter, the matter had been adjourned. Therefore, it is assu



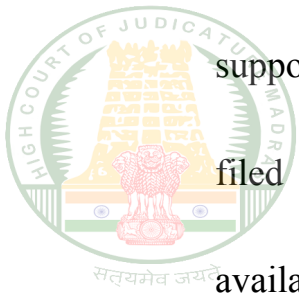
the

applicant was aware of the proceedings in the suit at least on 06.03.2023.

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8. When the matter was listed on 05.04.2023, a statement was recorded by this Court on the side of the applicant/ defendant that a written statement had been filed by him in SR.No.10609 of 2023. However, the Registry had made an endorsement that here had been no written statement filed in the said SR.No. and the said SR.No is only with reference to the counter filed in the application No.116 of 2023. The written statement had only been filed by the defendant on 01.02.2024 along this application to set aside the ex-parte decree in SR.No.13097. This itself would show that the defendant has not come with the clean hands.

9. Further, when the matter was listed under the caption for “undefended board” there was no representation on his side and he was set ex-parte. In the affidavit filed in support of this application, the applicant had not made any averment as to why he had not been diligent in prosecuting the suit. On the other hand, a sympathy based upon his age had only been made at large. This Court cannot be carried with misplaced sympathy on a litigant who had not been diligent in defending himself. As rightly pointed out by the learned counsel appearing for the respondent the affidavit filed in



support of this application is also bereft of any material facts. The applicant had filed his counter as early as on 05.04.2023 to the application had been very much available in India till 03.10.2023 and there is no explanation as to how he had left the

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suit unattended at least till his departure from India.

10. That apart, the applicant was set ex-parte on 06.11.2023 and after a period of three (3) months, the suit was decreed ex-parte after recording the evidence on the side of the respondent/ plaintiff. It is further to be noted that the applicant had returned back to India on 30.11.2023 and had not taken any steps to set aside the ex-parte order dated 06.11.2023. Only after the ex-parte decree was passed, he has approached this Court with the instant application.

11. Hence, this Court is of the view that there is no merits in the application filed by the applicant and accordingly, the application stands dismissed.

19-08-2025

Gba

To
1. Uma Suresh



W/o.Late P.Suresh Chander Pal, Old No.7, New No.14, 2nd Main Road,
Ram Nagar, Peravallur, Chennai 600 082.



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