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CRP.No.1309 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:02.12.2025

Pronounced on:05.12.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CRP. No.1309 of 2024

G.Raghupathi

Petitioner(s)

Vs

1.G.Padmanabhan

2.P.Jayalakshmi

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 04.08.2023 made in C.M.A. No.10 of 2022 on the file of the Court of the V Additional Judge, City Civil Court, Chennai confirming the fair and decretal order dated 25.10.2021 passed in I.A. No.3135 of 2018 in O.S. No.1072 of 2007 on the file of the Court of the II Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Vijayakumar

For Respondents : Mr.S.Haja Mohideen Gisthi for R1
No Appearance for R2



ORDER

The first defendant, aggrieved by the dismissal of his application to set aside the exparte decree and the same having been confirmed by the Appellate Court in CMA. No.10 of 2022, is the revision petitioner.

2. I have heard Mr.R.Vijayakumar, learned counsel for the revision petitioner and Mr.S.Haja Mohideen Gisthi, learned counsel for the first respondent.

3. The learned counsel for the revision petitioner Mr.R.Vijayakumar, would contend that the suit was filed by the first respondent for the relief of bare permanent injunction without the plaintiff having any right, title or interest in the suit property. Further, it is the contention of the learned counsel for the revision petitioner that the plaintiff ought to have sought for the relief of declaration and the relief of permanent injunction alone was not sustainable in the eye of law, when there is a cloud on the title of the plaintiff. Mr.R.Vijayakumar, learned counsel would further contend that when the application to set aside the exparte decree had been filed along with an application to condone the delay and the Trial Court also exercised discretion to condone delay in favour of the revision petitioner, thereafter the Trial



Court ought not to have dismissed the Application under Order IX, Rule 13 CPC. He would further state that the Trial Court having accepted the reasons for delay, should have consequently allowed the Application under Order IX Rule 13 CPC as well to enable the first respondent to contest the suit on merits. He would pray for the revision being allowed.

4. Per contra, Mr.Haja Mohideen Gisthi, learned counsel for the first respondent/plaintiff would submit that the suit was contested by the second respondent and was decreed on merits and therefore, the petitioner cannot seek to set aside the decree, as if it is an exparte decree. He would further state that the revision petitioner cannot canvass the merits of the suit or the suit reliefs in an application to set aside the exparte decree and merely because, the delay has been condoned, it is not automatic or consequential for the Trial Court to allow the Application under Order IX, Rule 13 CPC as well.

5. In this regard, the learned counsel for the first respondent took me through the discussions made by the Trial Court as well as First Appellate Court, concurrently dismissing the Application under Order IX Rule 13 CPC. He would therefore state that well considered orders of the Trial Court and First Appellate Court do not call for interference.



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6. I have carefully considered the submissions advanced by the learned counsel for the parties.

7. No doubt, it is the contention of the revision petitioner that the suit as framed is not maintainable, in the absence of the relief of declaration. However, while considering the present application to set aside the exparte decree, I do not see any necessity to go into the merits of the rival contentions of the parties. The suit has been filed only for the relief of a permanent injunction to restrain the revision petitioner and the second respondent from interfering or alienating the Schedule C property which has been set out in the plaint schedule. Mr.R.Vijayakumar, learned counsel for the revision petitioner would submit that the parties derive interest under a Will of R.Gopalaswamy which was executed on 06.06.1979. Admittedly, the said Will has been probated in TOS No.41 of 2006, on 24.01.2017 and Original Side Appeal has been preferred in O.S.A. No.177 of 2017 as against certain findings of the learned Single Judge also came to be dismissed on 20.03.2019.

8. Be that as it may, admittedly, today the first respondent is in physical possession of a portion of the entire property which is subject matter of the Will. The case of the revision petitioner is that the first



respondent was beneficiary of a settlement deed executed by the second respondent on 11.03.1985. However, the said settlement deed was cancelled by a registered cancellation deed of the year 1991 and therefore, the first respondent has no subsisting right or interest in the property, to seek any relief.

9. Admittedly, the parties are in physical possession of different portions of the property which is subject matter of the Will. There is a common passage earmarked for the use of the both the parties. After the decree was passed in the suit before the Trial Court on 06.01.2016, the Will was probated before this Court on the Original Side, as already discussed herein, in TOS. No.41 of 2006. Therefore the parties have to workout their right in terms of the bequest made under the Will. It is equally open to the revision petitioner to seek for appropriate reliefs against the first respondent, if it is the case of the revision petitioner that the first respondent has no right to continue to occupy the suit property. In fact, even in the proceedings before the Trial Court, it is only the contention of the revision petitioner that the first respondent is in illegal occupation of the property. Possession of the first respondent is not denied. Therefore, I do not see any real purpose in driving the parties to revive the litigation insofar as the concluded proceedings in the suit for



injunction is concerned.

10. It is however made clear that the relief of permanent injunction in favour of the first respondent in O.S. No.1072 of 2007, is only based on the findings of the physical possession being with first respondent/plaintiff. It is for both the parties to work out their rights by initiating appropriate legal proceedings against the others and the relief of permanent injunction granted in favour of the first respondent shall not come in the way of the revision petitioner to seek relief against the first respondent/plaintiff, in the manner known to law. Considering that the two different portions are in the occupation of the parties viz., the revision petitioner and the first respondent, with a right of usage of common passage, it is made clear that the parties shall maintain status quo and shall not disturb the enjoyment of the respective portions by the revision petitioner and the first respondent, till such time, either of them move the Competent City Civil Court seeking appropriate relief, either for partition or possession as the case may be.

11. With the above observations, the Civil Revision Petition is dismissed. No costs.



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Index : Yes / No

Internet : Yes / No

To:

1. The V Additional Judge, City Civil Court, Chennai.
2. The II Assistant Judge, City Civil Court, Chennai.

P.B.BALAJI, J.,

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Pre-delivery order in
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