



CMA No.46 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2025

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.Nos.46 of 2025

and

CMP.No.6646 of 2025 in CMP.NO.318 of 2025

A.Mahalakshmi
D/o.S.T.Shanmugam

Vs.

... Appellant

1.A.H.Yasmeen Sultana
W/o.B.Allah Bakash

2.S.Dillibabu
S/o.Shanmugam

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1(D) of the Code of Civil Procedure, praying to set aside the fair and decreetal order dated 15.11.2024, made in I.A.NO.1 of 2024 in O.S.No.3919 of 2022 on the file of VII Additional Judge, City Civil Court, Chennai.

For Appellant	: Mr.R.Rajaramani
For R1	: Mr.S.Udhayakumar
For R2	: No appearance

JUDGMENT



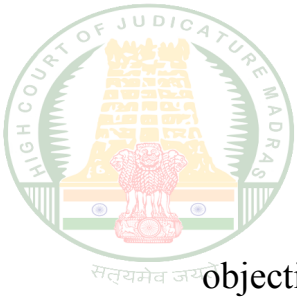
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The appellant has filed this appeal to set aside the fair and decreetal order dated 15.11.2024 made in I.A.NO.1 of 2024 in O.S.No.3919 of 2022 on the file of VII Additional Judge, City Civil Court, Chennai.

2. The appellant is the first defendant in suit O.S.No.3919 of 2022 on the file of VII Additional City Civil Court, Chennai. The said suit was filed by the plaintiff / first respondent herein for recovery of possession and other consequential reliefs, including damages for the occupation of the property. The suit was filed against two defendants, wherein the appellant was arrayed as first defendant.

3. According to the appellant / first defendant, she had no personal knowledge about the suit. Since the summons were served only on the second defendant, she came to know of the proceedings only later, and by then, she had already been set ex-parte and an ex-parte decree was passed against her. On coming to know of the decree dated 11.08.2023, she immediately filed an application within 30 days to set aside the ex-parte order, during September 2023 itself, in I.A.NO.1 of 2024. In that application, the plaintiff / first respondent also appeared and raised



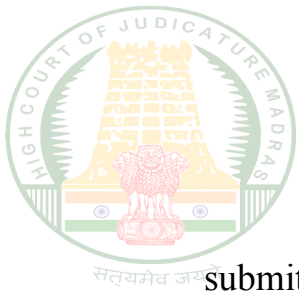
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objections.
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4. On hearing both sides, the learned trial Judge dismissed the application, holding that the appellant had clear knowledge about the suit proceedings and that the summons had also been affixed on the door of the premises. Therefore, the reasons assigned by the appellant were found not justifiable, and accordingly, the application was dismissed. Aggrieved the same, the first defendant / appellant has preferred this appeal.

5. The learned counsel for the appellant contends that sufficient opportunities was not given to her. In fact, she is the absolute owner of the suit property and had mortgaged the property with the plaintiff / first respondent. With an ulterior motive, the plaintiff suppressed the real facts and filed the present suit, claiming recovery of possession from the appellant, who is the true owner of the property. The appellant asserts that she has valid defence to prove her case, and if the opportunity is denied, her valuable right to defend will be defeted.

6. By way of reply, the learned counsel for the first respondent



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submitted that the appellant is residing in the same house where the summons were served and the summons were also affixed on the door. Therefore, she was very well aware of the proceedings. With an intention to drag on the matter, she filed an application to set aside the ex-parte decree, which was rightly appreciated and dismissed by the learned trial Judge, and hence, the order needs no interference. Further, he also pointed out that the appellant had participated in the Mediation proceedings. Therefore, she was fully aware of the suit proceedings, but she was not inclined to proceed with the suit and purposely evaded further participation.

7. To support his arguments, he relied on the authority, reported in MANU/SC/0855/2002, Basant Singh and Ors.Vs.Roman Catholic Mission, wherein it was held as follows:

“ 8.Second proviso to order IX Rule 13 casts an embargo on the Court that a decree passed ex-parte shall not be set aside merely on the ground that there has been an irregularity in the service of summons.”



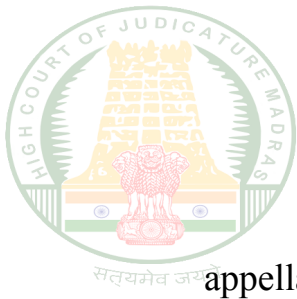
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8. Coming to the facts of the present case, the appellant contends that she is the absolute owner of the suit property, whereas the first respondent / plaintiff filed the suit for recovery of possession, claiming as though the property was purchased by her. The main objection of the appellant is that she had only mortgaged the property, but these facts were suppressed by the plaintiff. The dispute between the parties, therefore, is a matter for trial. According to the appellant, she had not been properly served with summons.

9. On the other hand, the learned counsel for the first respondent submitted that the appellant was very well aware of the proceedings. Since the house was locked, the process was affixed on the door on two occasions, and thereafter, substitution service was also affected. As per the observation made by the learned trial Judge, the second defendant was in occupation of the suit property, which indicated that the appellant / first defendant was not residing in the suit property at the relevant time.

10. Therefore, whether the summons were properly served on the



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appellant or not is a matter to be carefully considered. There is no proof that she was residing in the suit property at the time when the summons were served. Hence, the observation made by the learned trial Judge cannot be sustained and is liable to be set aside.

11. Accordingly, the appeal is allowed. The findings of the trial Court are set aside. I.A.No.1 of 2024, filed by the appellant / petitioner is ordered to be allowed. Since, she had already filed her written statement, the trial Court is directed to proceed with the matter in accordance with law.

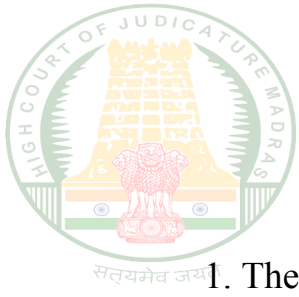
12. Thus, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index:Yes/No
Speaking/non Speaking order
Neutral Case citation: yes/no
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1. The VII Additional Judge, City Civil Court, Chennai.
2. The Section Officer, V.R. Section, High Court of Madras.

T.V.THAMILSELVI, J.

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