
(2013) 12 MAD CK 0132

In the Madras High Court

Case No : C.R.P. No. 4724 of 2013 and M.P. No. 1 of 2013

Mani Mesthri, Mannu, Ramudu Alias Ramajayam and Sankar	APPELLANT
Vs	
Nataraj Kiramani	RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) 1 CTC 184

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : Manjula for Ashok Menon, for the Appellant;

Judgement

P.R. Shivakumar, J.—The arguments advanced on behalf of the revision petitioners are heard. The grounds of revision and the materials produced in the form of typed set of papers are also perused. The respondent herein filed a suit O.S. No. 21 of 2010 on the file of the Principal District Munsif, Cheyyar, against the revision petitioners 1 to 4 herein and one Ramajayam, son of Govindaraji Pillai for permanent injunction restraining them not to trespass into the suit property and cause disturbance to the peaceful possession and enjoyment of the same by the respondent herein/plaintiff. Since the defendants in the said suit did not appear, they were set ex-parte and the trial Court proceeded with the exparte trial and at the end of the exparte trial passed an exparte decree granting the relief of permanent injunction as prayed for in the plaint. Such a decree came to be passed on 30.03.2010.

2. After a lapse of 15 = months from the said date of passing of the exparte decree, the revision petitioners, who figured as defendants 1, 2, 4 and 5, chose to file an application under Order IX Rule 13 CPC for setting aside the exparte decree dated 30.03.2010 made in the above said suit O.S. No. 21 of 2010. As the said application was not filed in time, it was accompanied by a petition filed u/s 5 of the Limitation Act to condone a delay of 447 days in filing the application to set aside the exparte decree. Out of 5 defendants, one has died and the other four defendants namely defendants 1, 2, 4 and 5 filed the said applications. The

application filed under Order IX Rule 13 CPC was not numbered and the application filed u/s 5 of the Limitation Act alone came to be taken on file as I.A. No. 793 of 2011 in O.S. No. 21 of 2010.

3. The learned Principal District Munsif, Cheyyar, after hearing, came to the conclusion that the revision petitioners/the petitioners in the above said Interlocutory Application (I.A. No. 793 of 2011) were not able to explain the inordinate delay in preferring the application under Order IX Rule 13 CPC and that the reason assigned by the petitioners could not be accepted to be a valid reason for condoning the said delay. Accordingly, the learned trial Judge dismissed the said application I.A. No. 793 of 2011 by the impugned order and decretal order dated 30.11.2012.

4. As against the said order of dismissal of I.A. No. 793 of 2011, the petitioners could have preferred a revision u/s 115 of the Code of Civil Procedure, but the revision petitioners chose to rely on Article 227 of the Constitution of India to invoke the supervisory power of this Court only in order to avoid the onerous job of explaining the delay in preferring the revision. When an alternative remedy of revision u/s 115 of the CPC is available, invocation of Article 227 of the Constitution of India shall not be proper when the jurisdiction of the Court which passed the impugned order is not questioned and the same can be even construed to be an attempted abuse of process of Court.

5. The learned counsel for the revision petitioners would submit that since the petitioners were not served with summons they were not aware of the filing of the suit and the passing of the exparte decree and that the same was the reason why they had to approach the trial Court with an application under Order IX Rule 13 CPC with a delay of 447 days along with an application u/s 5 of the Limitation Act to condone the said delay. From the very averments found in the affidavit filed in support of the application filed before the trial Court and the other materials produced in the form of typed set of papers, it is abundantly clear that though direct service of summons was not made on the revision petitioners and service was effected by affixture, the same was done due to their refusal to receive the summons and the trial Court held such service by affixture on refusal was as good as actual service on the revision petitioners.

6. As per the scheme of Order IX Rule 13 CPC when the defendant, against whom an exparte decree is passed, is able to prove that he/she was not duly served with summons and the explanation found therein also says that the substituted service would not be construed to be due service for the purpose of the said rule. The very same provision contains an explanation that in case the concerned defendant did have notice of the institution of the proceedings and pendency of the proceedings, the absence of service of summons shall have no effect and the plea of absence of service of summons will not be recognised as a valid ground for setting aside the exparte decree.

7. In this case, the revision petitioners have not stated that they did not have

the knowledge of the pendency of the proceedings in the Original Suit. On the other hand, they have stated that they had nothing to do with the suit and hence they chose to refrain from contesting the suit. It is also obvious from the report of the Commissioner filed in I.A. No. 104 of 2010, a copy of which has also been included by the revision petitioners in the typed set of papers, that even when the Advocate Commissioner gave notice to the revision petitioners they refused to receive the same and that thereafter the Advocate Commissioner noted the physical features of the property and submitted a report.

8. All the above said aspects will go to show that the contention now sought to be raised by the learned counsel for the revision petitioners is only an afterthought and it cannot be countenanced. The said aspect will go to show that the revision petitioners were bent upon protracting the case by refusing to receive summons, watching the progress of the case, allowing the case to be decreed *ex parte* and after the filing of the Execution Petition, they chose to file a petition to set aside the *ex parte* decree with an inordinate delay along with an application to condone such delay without assigning valid and acceptable reasons. Such an attempted protraction did not end there in the trial Court. Not content with causing of such a delay, which was not properly explained, the revision petitioners chose to prefer a revision after obtaining a certified copy of the impugned order, but not within the period of limitation prescribed for filing a revision u/s 115 of the Code of Civil procedure. Conscious of the fact that the revision was not in time, they have chosen to invoke Article 227 of the Constitution of India for challenging the said impugned order. When a remedy of regular revision is available, the revision petitioners ought not to have invoke Article 227 of the Constitution of India and the invocation itself, as pointed out *supra*, is nothing but an attempted abuse of process of Court. Even otherwise, on merits the revision petitioners do not make out a case for interference with the well considered order of the trial Court and the revision petition deserves to be dismissed at the threshold. Accordingly, the revision petition is dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.