

(2004) 09 MAD CK 0137
In the Madras High Court
Case No : C.R.P. (NPD) No. 2330 of 2000

Muthu

APPELLANT

Vs

K.V. Padmavathi, K.V. Kesavan, K.V. Ramamoorthi and K.V.
Damodaran

RESPONDENT

Date of Decision : 17-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2004) 4 MLJ 484

Hon'ble Judges : T.V. Masilamani, J

Bench : Single Bench

Advocate : A. Thiayarajan, for S. Balamurugan, for the Appellant; P. Valliappan, for Sarvabhauman Associates, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Masilamani, J.—The revision petitioner is the plaintiff and the respondents are the defendants. This revision petition is preferred by the plaintiff questioning the legality of the order passed by the II Additional District Munsif, Salem in I.A.No.144 of 1997 in O.S.No.1658 of 1996 dated 10.9.1999.

2. The petitioner/plaintiff filed a suit for specific performance and permanent injunction in O.S.No.1658 of 1996 on the file of the II Additional District Munsif, Salem and the said suit was decreed as against the defendants exparte. The defendants filed an application in I.A.No.144 of 1997 under Order 9 Rule 13 and Section 151 C.P.C. to set aside the exparte decree passed in the said suit on 24.2.1997 and the learned District Munsif allowed the same. Hence, the revision.

3. Heard Mr.A.Thiagarajan, the learned counsel appearing for the revision petitioner and Mr.P.Valliappan, the learned counsel appearing for the respondents.

4. The learned counsel for the petitioner has argued that the Court below ought to have held that the application filed under Order 9 Rule 13 and Section 151 C.P.C. is not maintainable for the simple reason that the respondents have not

established sufficient cause for their non-appearance in the Court on 24.2.1997 and that therefore, the respondents are not entitled to the discretionary order.

5. On the contrary, the learned counsel for the respondents has adverted my attention to the exparte decree dated 24.2.1997 passed against the defendants and argued that the Court below had rightly allowed the application filed by the defendants to set aside the said exparte decree passed against them. The learned counsel for the respondents has also cited the decision rendered by the Supreme Court in B. Janakiramaiah Chetty Vs. A.K. Parthasarathi and Others, and the decision of this Court in V. Gugeswari and V. Chamundeswari Vs. A. Shahul Hameed, to fortify his argument that since the decree passed by the trial Court is exparte in nature, the plaintiff is entitled to maintain the application under Order 9 Rule 13 and Section 151 C.P.C.

6. In this context, it is appropriate to extract the relevant portion in the judgment in O.S.No.1658 of 1996 passed by the learned District Munsif on 24.2.1997 as under:-

"Plaintiff present. Defendants called absent, set exparte. Evidence already recorded. Hence suit is decreed as prayed for with cost. Time for deposit of balance sale price two months. Time for execution of sale deed one month thereafter."

The categorical finding rendered by the learned District Munsif while passing the judgment is that "the defendants called absent, set exparte" and it indicates that the said judgment was not rendered on merits so as to attract the provisions under Order 17 and Rules 2 and 3 C.P.C. Hence, the contention put forth by the learned counsel for the petitioner that since the decree was passed on merits after considering the evidence on record, the learned District Munsif ought not have allowed the application filed by the defendants under Order 9 Rule 13 and u/s 151 C.P.C. is not acceptable. In these circumstances, this Court is of the considered view that the revision petition filed by the plaintiff deserves no merit and it is liable to be dismissed.

7. Thus, the Civil Revision Petition is dismissed. However, there will be no order as to costs. Since the suit is of the year 1996, the trial Court is directed to dispose of the same on merits within three months from the date of receipt of copy of the order. The records if any received shall be returned to the trial Court forthwith.