

(2010) 04 MAD CK 0205

In the Madras High Court

Case No : C.R.P. (NPD) . No. 856 of 2009 and M.P. No's. 1 and 2 of 2009

Ramamurthy, R. Suryagandhi Ammal and N.R. Kennedy

APPELLANT

Vs

Muthukrishnan and Others

RESPONDENT

Date of Decision : 15-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7

Citation : (2010) 04 MAD CK 0205

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : G. Rajan, for the Appellant; Muthu Krishnan, for R1, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The civil revision petitioners herein are the applicants in I.A. No. 562 of 2008 and the defendants 1 to 3 in O.S. No. 306 of 2007, on the file of the learned Additional District Munsiff Court, Thiruvannamalai. The civil revision petitioners have filed an Interlocutory Application in I.A. No. 562 of 2008 praying to set aside the ex-parte decree passed against the revision petitioners on 26.07.2007 under Order IX Rule 7 of Civil Procedure Code. In the said application, the revision petitioners/applicants/defendants 1, 2 and 3 have inter alia stated that the applicant is the third defendant in the suit and that on behalf of the first and second defendants, he has filed the above set aside application. The first and second defendants were set ex-parte on 26.07.2007. The applicant/third defendant stated that he was not able to attend the hearing on 30.10.2007 due to his illness and hence he was set ex-parte. Hence, all the civil revision petitioners have prayed to set aside the ex-parte decree, dated 26.07.2007 and 30.07.2007 in O.S. No. 306 of 2007.

2. In the counter statement filed by the respondents/plaintiffs, it has been stated that the suit was filed for declaration. In the said suit, summons were served on the 12 defendants. Out of the 12 defendants, 4th to 6th defendants have

engaged counsels and have filed written statements in the said suit. These revision petitioners/defendants 1 to 3, were called absent on 26.07.2007 and set ex-parte. The first and second defendants have locus standi to defend the case. The PW1 was examined and at this stage the set aside application was filed.

3. The plaintiffs are poor. Hence, the defendants, with the malafide intention to drag on the case, have filed this set aside application. In the set aside application, the third defendant has given a sworn affidavit on behalf of the first and second defendants also stating that the third defendant, due to his illness, had not attended the Court on 30.10.2007 and that due to this, an ex-parte decree had been passed against them as no affidavit had been filed in the name of the first and second defendants. The third defendant also had not filed any mechanical certificate to prove his illness. The respondents further stated in their counter statement that the defendants have joined together with the malafide intention to drag on the proceedings and have hence filed this set aside application. The set aside application has not been filed along with condonation delay petition. Hence, the respondents/plaintiffs prayed to dismissed the set aside application.

4. The learned Additional District Munsif, Thiruvannamalai, in his order dated 20.11.2008 in I.A. No. 561 of 2008 in O.S. No. 306 of 2007 has stated that the first and second defendants were called absent and were set ex-parte on 26.07.2007 and the third defendant was set exparte on 30.10.2007. The learned Judge further pointed out that the third defendant has filed an affidavit on behalf of the first and second defendants also. For non-appearance of the first and second defendants on 26.07.2007, reason was not assigned. The third defendant also has not produced any medical record to prove his illness and failed to explain his absence. On 15.04.2008, on the side of the plaintiffs, swearing statements were filed. After this, till 28.08.2008, the defendants have not filed any application. On on 28.08.2008, the set aside application was filed. In the said application, no valid reasons have been given to establish their case. Hence, the set aside application was dismissed.

5. Aggrieved by the said order and decreetal order passed in I.A. No. 561 of 2008 by the learned Additional District Munsif, Thiruvannamalai, dated 20.11.2008, the present Civil Revision Petition has been filed by the civil revision petitioners/applicants/defendants 1 to 3.

6. Learned Counsel appearing for the civil revision petitioners has contended that the Trial Court ought not to have dismissed the petition to set aside the ex-parte order filed under Order IX Rule 7 on the ground that the reasoning of illness to the third defendant on 26.07.2007 has not been proved. It has been contended that the learned Judge ought to have seen that the suit is for declaration to set aside the sale deed and for the consequential release. The petitioners have filed their written statements and are having very good case to succeed on merits. If the ex-parte order is allowed to become final then, the petitioners would lose valuable right to contest the suit on merits. The learned Counsel further stated

that the written statement of the revision petitioners are ready for filing. Hence, it has been prayed by the learned Counsel for the revision petitioners to set aside the order dated 20.11.2008 passed by the Additional District Munsiff, Thiruvannamalai in I.A. No. 561 of 2008.

7. The first respondent has filed written submission stating that the sale deed dated 04.06.1998 executed by one Lakshmi Ammal relating to the "B" schedule properties in favour of the second defendant is invalid. The third defendant failed to file his written statement in the suit. Now, the defendants 4 to 6 are contesting the suit. After a lapse of one year, the defendants 1 to 3 have filed the set aside application without any valid reasons. The first respondent, Muthukrishnan, has contended that he is a poor man. Hence, the defendants have wantonly and deliberately with the intention to cause him trouble, have dragged on this case. He has further contended that no valid reasons had been assigned by the defendants to explain their absence in the set aside application filed by them. As such, the order passed by the learned District Munsiff Court is correct. Hence, he has prayed for dismissal of this civil revision petition.

8. Considering the facts and circumstances of the case, scrutiny of findings of the learned Additional District Munsiff, Thiruvannamalai and arguments advanced by the learned Counsel appearing on either side, this Court is of the view that the sale deed dated 04.06.1988 standing in the name of the defendant is being challenged. As such, the defendant has a vital role to play in this case and hence his presence is necessary to render justice to the parties concerned without lacunae in evidence.

9. Hence, this Court sets aside the order passed by the learned Additional District Munsiff, Thiruvannamalai, in his order dated 20.11.2008, in I.A. No. 561 of 2008 in O.S. No. 306 of 2007 and consequently the civil revision petition is allowed, on condition that the petitioners shall pay a cost of a sum of Rs.2,000/- by way of cash to the first respondent namely Muthukrishnan, within a period of three weeks from the date of receipt of this order. After complying with this conditional order, by the revision petitioner, the learned District Munsif Court, Thiruvannamalai is directed to dispose the main case in O.S. No. 306 of 2007, within a period of six months from the date of compliance of the conditions imposed on the revision petitioners.

10. In the result, the above Civil Revision Petition is allowed and the decree and decreetal order dated 10.11.2008 in I.A. No. 561 of 2008 in O.S. No. 306 of 2007, on the file of the Additional District Munsiff Court, Thiruvannamalai, is set aside. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.