
(1995) 01 MAD CK 0038
In the Madras High Court
Case No : C.R.P. No. 3138 of 1994

Sahu Dawood Ammal

APPELLANT

Vs

Muniammal and others

RESPONDENT

Date of Decision : 27-01-1995

Acts Referred:

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

Citation : AIR 1995 Mad 369

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Judgement

Abdul Hadi, J.—This petition coming on for orders as to admission on this day upon perusing the petition, the orders of the lower Court and

upon hearing the arguments of Mrs. Hema Sonpath, Advocate for the petitioner and of Mr. S. V. Jayaraman, Advocate for the respondents, the

Court made the following order :

The fourth defendant in O. S. No. 73 of 1991 on the file of the sub-Court, Ramanathapuram at Madurai at is the petitioner in this revision petition

against the order dated 8-8-1994 in I.A. No. 362 of 1993 in the said suit. The said suit was filed by the four plaintiffs that is one Gurunathan, the

second plaintiff and the other plaintiffs who are his mother, sister and grandmother. When the said suit was dismissed for default of appearance of

the plaintiffs on 29-4-1993, the second plaintiff Gurunathan alone has filed the above said I.A. under Order 9 Rule 9 C.P.C. for setting aside the

dismissal of the above said suit. Though the cause title of the impugned orders shows that all the four plaintiff's have filed the said I. A., the body of

the order clearly shows that only the said Gurunathan has filed the said I.A. No doubt, the body of the impugned order says that he has filed the

said I.A. on behalf of the other petitioners also. The impugned order has allowed the said I.A. on condition of payment of Rs. 300/- on or before

5-9-1994. It appears, the said amount has been paid and this civil revision petition has been filed on 18-10-1994. In the affidavit filed in support

of the above said I.A. what is alleged is that from 26-4-1993 the above said Gurunathan who was conducting the suit on behalf of all the plaintiffs

was suffering from material fever dysentery account he was bedridden and he was not in a position to move away from his house and that is why

he could not attend the case on 20-4-1993, and that his counsel also reported "no instructions" on that day.

2. In the counter affidavit, there is no doubt, a denial of the above said allegation of illness and further it is contended that the said I.A. is not

maintainable since it has been filed by the second plaintiff and not all the plaintiffs.

3. The Court below in its impugned order has considered only this latter question regarding the maintainability of the I.A. In that regard, the

impugned order says that the I.A. has been filed by the above said Gurunathan on behalf of the mother, sister and grandmother who are the other

plaintiffs. So. the Court below proceeded on the footing that the I.A. was maintainable, but the Court below has not considered the other aspect

regarding the above said alleged illness of the second plaintiff.

4. The learned counsel appearing for the petitioner submits that the Court below ought to have held that the said I.A. was not maintainable on the

above said ground. But she is unable to substantiate that contention by any decided authority or any relevant provision of law. I am also unable to

accept the above said contention. No doubt, the learned counsel for the respondents/plaintiffs drew my attention to the decision of a Division

Bench reported in AIR 1919 Oudh 4 (Bishambhar Nath v. Girdhari Lal) wherein it has been held that an order under Order 9, Rule 9 setting aside

an order dismissing a suit for default made on the application of some of several plaintiffs, may operate in favour of all of them. This also shows that

the above said I.A. by the second plaintiff alone, is maintainable.

5. However, as already indicated by me, the Court below has not considered the aspect of illness of the second plaintiff Gurunathan as alleged in

the affidavit filed in support of the application. Since the above said material

point has not been considered by the Court below, there is no other alternative except to set aside the impugned order and remand the matter back to the trial Court for the fresh disposal of the above said I.A.

362/93. Accordingly, the impugned order is set aside and the Court below is directed to deal with the above said I.A. afresh on the above said

question of illness and pass orders in accordance with law. The Court below is directed to do so within four weeks from the date of receipt of a

copy of this order. The civil revision petition is allowed. No costs.

6. Petition allowed.