

In the Court of I Additional District Judge, Tiruvallur

Present: Thiru.S.GANAPATHISAMY, B.A., B.L.,

I Additional District Judge, Tiruvallur

Thursday, the 03rd day of November 2022

I.A.Nos.7 of 2022

in

O.S.No.33 of 2014

1.Vivek

2.Vignesh

... Petitioners / Defendants 6 and 7

Vs.

G.R.Sridharan

... Respondent / Plaintiff

1. Mr.G.R.Damodharan

2. Mr.G.R.Alavandar

3.Mr.G.R.Rameshbabu

4. Tmt.Manjula

5. Vinoth

6. Tmt.Rasikala

7. Tmt.Gajalakshmi

8. Tmt.R.Kasturi

... Respondents / Defendants

This Petition coming on 17.10.2022 before me for final hearing in the presence of Mr.V.P.Dillibabu, learned counsel for the Petitioners / Defendants 6 and 7; Mr.P.D.Dilli Babu, learned counsel for the Respondent / Plaintiff and upon hearing both side arguments; perusing the related records, and having stood over for consideration till this day, this Court delivers the following :-

ORDER

The petitioners / 3and 5th defendants have come forward with this application under Order 9 Rule 7 of CPC to set aside the exparte order dated

01.10.2015 inter alia alleging that the 2nd defendant, who is the paternal uncle of the petitioners, assured to take care of this case on behalf of the petitioners by obtaining the signatures of the petitioners in the Vakalath and the petitioners came to know only on 22.04.2022 that the 2nd defendant, who has engaged an advocate for himself alone, did not conduct the case on behalf of the petitioners as though the plaintiff and the 2nd defendant are alone having right over the suit properties which are the joint family properties. The petitioners have stated in their affidavit that only on account of false promise given by the 2nd defendant, when the case was posted on 01.10.2015, the petitioners have not filed their written statement and the ex parte order dated 01.10.2015 shall be set aside.

2. The 1st respondent / plaintiff has filed his counter in this application denying the allegations made in the written statement filed by the petitioners. The plaintiff has not chosen to resist the averments made in the affidavit filed by the petitioners in support of this application to set aside the ex parte order.

3. Heard both sides.

4. The point for consideration in this application is whether the exparte order passed against the petitioners can be set aside?.

5. In the suit filed by the plaintiff for the relief of preliminary decree for partition and other reliefs, when the case was posted on 01.10.2015 the

petitioners failed to appear before this court even after receipt of summons, as a result of which they were set ex parte. Though the counsel for the 2nd defendant received a copy of this application, he has not made any objection. The petitioners have filed their written statement along with this application. Therefore, this court deems fit to give an opportunity to the petitioners to contest the suit. However, the petitioners have filed this application to set aside the ex parte order after lapse of seven years. The petitioners should not be permitted to procrastinate the proceedings and for the delay caused by the petitioners, the plaintiff can be compensated.

6. Considering the facts and circumstances of the case, this application will be allowed on payment of cost of Rs.7,500/- by the petitioners to the plaintiff and Rs.7,500/- by the petitioners to the Tiruvallur District Mediation Center on or before 21.11.2022 at 11.00 a.m. failing which the application will stand dismissed. Call on 21.11.2022. Total Cost Rs.15,000/-.

Dictated by me to the Steno-Typist and transcribed by her in the computer, corrected and pronounced by me in the open Court on this the 03rd day of November 2022.

Sd/S.GANAPATHISAMY
**I Additional District and Sessions Judge,
Tiruvallur**

Both side Witness & Exhibits:- Nil

Sd/S.GANAPATHISAMY
**I Additional District and Sessions Judge,
Tiruvallur**

Fair/Draft Order
I.A.No.7/2022
in O.S.No.33/2014 in
DD : 03/11/2022
I Addl. Dist. Court
Tiruvallur

