

IN THE COURT OF THE DISTRICT MUNSIF, THIRUVOTTRIYUR
THIRUVALLUR DISTRICT.

Present: Selvi. K. Malarkodi, B.A.,B.L.,
District Munsif,
Thiruvottriyur

Wednesday, this the 11th day of September 2024

I.A.No. 5 of 2021
in
O.S.No.154 of 2018

R.Duraikannu

...Petitioner/ 1st Defendant

//Vs//

1.Maragathammal @ Maragatham

2. R.Anbarasu

....Respondent/Plaintiff

3.M.Govindhan

4. P.Mathi

5. A.Pandian

.....Respondents /2 to 5 defendants

This petition came up on 04.09.2024 for final hearing before me in the presence of M/s.R.Ramesh Chander and K.S.Karthikeyan Advocates for Petitioner/1st Defendant and M/s.P.John Bosco and Vijayalashmi Advocates for the Respondent/Plaintiff and R3 to R5 respondents called absent set exparte on 05.07.2024 and upon hearing enquiry on both sides and having stood over for consideration till this date, this court made the following:

ORDER

This petition is filed by the petitioner/1st defendant under Order 9 Rule 7 of CPC to set aside the exparte order dated 27.03.2019 in O.S.No.154/2018.

2. The averments of the petition/affidavit filed by the petitioner/1st

Defendant in short are as follows:

The petitioner stated that he is the petitioner/1st Defendant. On 27.03.2019 when the matter came up for hearing, he was not able to be present before this court due to his family commitments and not able to meet his Advocate. Hence this court was pleased to set aside exparte and posted the matter on 27.03.2019 for exparte evidence. His non appearance is neither willful nor wanton but due to the bonafied reasons stated herein above. Hence this petition is filed to set aside the exparte order dated 27.03.2019 in O.S.No.154/2018 pending on the file of this court. Hence this petition.

3. The averments of the counter filed by the respondent/plaintiff in short are as follows:

The respondent stated that he is the respondent herein and plaintiff in the above suit. He denied all the allegations in the petition except those that are specifically admitted herein and puts the petitioner to strict proof of the same. The above suit summons was served to all the four defendants and Mr.Ramesh filed vakalath for D1 and Mr.Nagasundaram filed vakalath for D2 to D4 as early as on 08.11.2018 and sought time for filing counter in I.A and for filing written statement in the above suit. The above matter was periodically adjourned by this court for filing counter and written statement of respondents from 10.02.2018, 08.01.2019, 13.02.2019 and 27.03.2019. The respondents were called absent and set exparte on 27.03.2019 and

posted for exparte enquiry on 22.04.2019 on that day the Hon'ble Presiding Officer was on C.L and reposted to 21.06.2019, on that day the above case was posted to 16.07.2019 for exparte evidence. In the mean time 1st plaintiff his mother died and hence memo filed by him to implead the legal heir on record and steps were taken and plaint was amended accordingly. Thereafter the above matter was posted on 24.01.2020 for recording evidence of plaintiff. On 24.01.2020 evidence was recorded by the plaintiff. Further stated that this court has given sufficient time to the respondents inspite of the sufficient opportunity given by this court the respondents failed to file their counter in I.A and written statement in the suit and now come with this false and vexatious petition only to gain time unlawfully and to protract the proceedings endlessly to harass the respondent/true owner of the suit property. Hence this petition is liable to be dismissed.

4. Now, the point for consideration is whether the petition filed Under Order 9 Rule 7 of CPC is to be allowed or not?

5. The petition counter and other materials available on records were carefully perused. Both sides have not examined any witness and have not marked any Exhibits and documents.

6. Heard both sides.

7. Admittedly, the suit is filed for the relief of permanent injunction and consequential relief of mandatory injunction. According to the petitioner/1st defendant he was not able to be present before this court due to his family commitments and not able to meet his Advocate. Hence this court was pleased to set aside exparte and posted the matter on 27.03.2019 for exparte evidence. Therefore this petition is filed to setaside the exparte order passed against him.

8. Per contra, the respondent contended that even though sufficient opportunity was given to the petitioner he failed to file his written statement and filed this petition only to drag on the proceedings.

9. Considering the facts and circumstances of the case this court feels that, the petitioner has to be given sufficient opportunity to put forth his case to meet the ends of the justice. No prejudice will be caused to the respondent by way of allowing this application.

In the result, this petition is ordered to be allowed on cost of Rs.500/- to be paid by the petitioner/1st defendant to the respondent/1st plaintiff on or before 18.09.2024, failing which this petition shall stand dismissed. Call on 20.09.2024.

Dictated directly to the steno-typist, typed by her in the computer, corrected and pronounced by me in open court, this the 11th day of September 2024.

District Munsif,
Thiruvottriyur.

List of witnesses and exhibits on both side: Nil

District Munsif,
Thiruvottriyur.