

IN THE COURT OF THE DISTRICT MUNSIF AT TIRUTTANI

Present : Tmt. G. PRIYA, B.A.,M.L.,
District Munsif (FAC)
Tiruttani

Friday, the 17th day of November 2023

IA.No.1 of 2021 in OS.No.33 of 2019

...

1. Chengalvaraya Naidu (died)

2. Lissy

3. T. Ramanathan

...Petitioners/Defendant 1 to 3

/Vs/

1. Munirathinam

2. Anandhan

...Respondents/Plaintiffs 1 and 2

This Petition coming on this day for final hearing before me in the presence of M/s. V. Nithyanandam, M. Dhanarajan, Advocates for the Petitioners, M/s.V.Kishore Reddy, E. Vijaya Kumar, Advocates for the Respondents and upon perusing the entire case records and after having consideration, this Court delivers the following:-

ORDER

This Petition had been filed under Order 9 Rule 7 of CPC to set aside the exparte order passed in O.S.No.33/2019 on 15.02.2021.

1. CRUX OF THE PETITION

The case of the Petitioner is that the suit is filed by the Plaintiff for the relief

of declaration and to declare the sale deed executed by the 1st Defendant in favour of the Petitioner/2nd Defendant as null and void. The Plaintiff had not filed any documents to prove their case the Plaintiff does not have any right and title over the suit property only with the intention to grab the suit property from the 2nd Defendant the Plaintiff has filed this vexatious suit. The Petitioner/2nd Defendant had purchased the property from the 1st Defendant late.Sengalvaraya Naidu for a valid consideration on 15.02.2019 and a sale deed is executed vide document No.558/2019. The suit is not maintainable either in law or on facts. Hence, this Petition to reject the plaint under Order VII Rule 11 of CPC is filed whereas notice was served to the Plaintiff and counter was filed subsequently posted for enquiry. Due to Covid – 19 the Petitioners could not able to follow the case hence were set exparte on 15.02.2021 for non filing of the Written Statement. The reason for non filing Written statement was due to Covid 19 and as the Petition for rejection of plaint was pending the Written Statement was not filed. Hence the non filing of the Written Statement is neither willful nor wanton. Hence this Petition.

2. COUNTER AVERMENTS

The averments of the Petition are false. The Petitioners were set exparte due to non filing of their Written Statement after giving sufficient opportunities hence, this Petition is not maintainable either in facts or on law and liable to be dismissed in limini.

3. POINT FOR DETERMINATION:

Whether the exparte order is to be set aside or not?

4. It is observed that the Petitioner/2nd Defendant had filed Petition under Order VII Rule 11 of CPC for rejection of plaint further it is also observed that the Petitioner/Defendant had not filed their Written Statement within the time period given. Hence, the Petitioner/Defendant had been set exparte on 15.02.2021. It is noted that the Petitioner had stated that due to covid 19 pandemic situation the

Petitioner/Defendant was unable to file his Written Statement whereas it is observed that the suit is filed in the year 2019 and the Petitioner/Defendant was set exparte only on 15.02.2021. The reason for delay in filing the Written Statement was due to pandemic situation as stated by the Petitioner is acceptable. Further, in the interest of justice and to give reasonable opportunity for the Petitioner/Defendant to defend his case and for the delay and hardship caused for the Respondent/Plaintiff this Court is inclined to allow this Petition upon payment of costs.

5. In the result, this Petition to set aside the exparte order passed in O.S.No.33/2019 on 15.02.2021 is allowed on payment of cost of Rs.3,000/- payable by the Petitioners/Defendant 1 to 3 to the Respondents/Plaintiffs 1 and 2 on or before 29.11.2023, failing which adverse orders will be passed.

Call on 29.11.2023.

Dictated to the Steno-typist, typed by her directly, corrected and pronounced by me in open Court, this 17th day of November 2023.

Sd/- G. Priya
District Munsif (FAC)
Tiruttani.

Petitioners side Witness & Exhibits:- NIL

Respondents side Witness & Exhibits:- NIL

Sd/- G. Priya
District Munsif (FAC)
Tiruttani.