

Madras High Court

Mohan vs Natchiammal on 5 August, 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05/08/2011

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.R.P(NPD)(MD)No.2485 of 2010

and

M.P(MD)No.1 of 2010

Mohan

..Petitioner

Vs

1.Natchiammal

2.Balasundaram

3.Suresh

..Respondents

PRAYER

Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the order in I.A.No.1293 of 2007 in O.S.No.179 of 2007 dated 22.07.2010 on the file of the District Munsif Court, Musiri.

!For Petitioner ... Mr.H.Arumugam

^For R1 and R2 ... Mr.D.Selvanayagam

For R3 ... No appearance

:ORDER

This petition has been filed by the petitioner to set aside the order in I.A.No.1293 of 2007 in O.S.No.179 of 2007 dated 22.07.2010 on the file of the District Munsif Court, Musiri.

2.The Brief facts of the case are as follows:-

The plaintiff/1st respondent has filed the suit in O.S.No.179 of 2007 against the defendant/petitioner herein and another against their men and gents not to interfere with his possession and enjoyment and other relief. The said suit was set ex-parte on 16.08.2007. Hence, the

petitioners/defendants have filed the set aside application along with condone delay of 25 days. The same was resisted by the respondent/plaintiff by way of counter statement. After hearing the arguments of the counsels for the defendant and the plaintiff and on perusing the plea of the both the parties, the petition was dismissed with costs. Aggrieved by the said dismissal order, the revision petitioner/1st defendant has filed the above revision petition to set aside the order passed in I.A.No1293 of 2007 in O.S.No.179 of 2007 dated 22.07.2010 on the file of the District Munsif Court, Musiri.

3.The learned counsel for the petitioner/1st defendant argued that the 1st defendant had himself admitted that his affidavit for condoning delay of 25 days is false since the petitioner is an illiterate and is not able to understand the questions asked in the cross-examination. This kind of statements made is prejudiced to the interests of the 2nd respondent. The learned counsel for the 1st defendant argued that as per the plea of the plaintiffs and defendants, several issues had been raised. Therefore, after framing issues in the suit and after adjudication, only thereafter both the parties will get proper justice before the Court. As such, the ex-parte order shall be set aside for the interest of both parties.

4.The learned counsel for the respondent/plaintiff has fairly admitted that the main suit shall be disposed on merits. Further, the learned counsel requested the Court to dispose the main suit within the stipulated period as expeditiously as possible. This Court appreciates the learned counsels magnanimity and valid legal suggestions.

5.In view of the facts and circumstances of the case and arguments advanced by the learned counsel on either side, this Court is of the considered opinion if the ex-parte order is set aside, no one will be prejudiced. Therefore, the above civil revision petition is allowed with the direction to the learned Judge to dispose of the main case in O.S.No.179 of 2007 within a period of three months from the date of receipt of this order and this Court sets aside the order passed in I.A.No.1293 of 2007 in O.S.No.179 of 2007 dated 22.07.2010, on the file of the District Munsif Court, Musiri. Accordingly ordered.

6.Resultantly, the above civil revision petition is allowed with the above observations. Consequently, the order and decretal order passed in I.A.No.1293 of 2007 in O.S.No.179 of 2007 dated 22.07.2007 is set aside and the main suit in O.S.No.179 of 2009 is restored on the file of the District Munsif Court, Musiri, for trial on merits, within a period of three months from the date of receipt of this order. Connected miscellaneous petition is closed. There is no order as to costs.

skn To The District Munsif, Musiri.