

Manuel Vs. the State of Tamil Nadu Rep. by District Collector,

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Court : Chennai

Decided On : Mar-27-2007

Reported in : (2007)4MLJ218

Judge : S. Nagamuthu, J.

Acts : Limitation Act - Sections 5; Code of Civil Procedure (CPC) - Order 5, Rules 17, 18, 19, 20, 20(1) and 20(1A)

Appeal No. : C.R.P.NPD.(MD). No. 283 of 2006 in C.M.P. No. 2839 of 2006

Appellant : Manuel

Respondent : The State of Tamil Nadu Rep. by District Collector, ;executive Engineer (implementation), Division N

Advocate for Def. : D. Gandhiraj, Govt. Adv.

Advocate for Pet/Ap. : D. Rajagopal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S. Nagamuthu, J.

1. The Civil Revision Petition has been filed against the order passed by the Subordinate Judge, Padmanabhapuram made in I.A. No. 176 of 2004 in A.S.S.R. No. 5385 of 2004 dated 12.04.2005.

2. The brief facts of the case are as follows:

Originally, the petitioner had filed O.S. No. 234 of 1993 on the file of the Additional District Munsif Court, Padmanabhapuram against the respondents herein for declaration of title and for permanent injunction and other reliefs with reference to the suit schedule properties. The said suit was decreed with costs on 21.04.1997.

3. It is not in dispute that the decree in E.P. No. 142 of 2000 for attachment of the immoveable properties of the respondents for realisation of the cost was also filed. It appears that the cost was paid during the pendency of the said E.P. It is also not in dispute that after 7 years and 7 months from the date of decree and only after three years and three months from the date of termination of the E.P., the respondents have filed an appeal challenging the decree and judgment dated 21.04.1997 before the appellate Court. For condonation of the delay of 2345 days in preferring the said appeal, the respondents have filed a petition under Section 5 of the Limitation Act, in I.A. No. 176 of 2004. The said petition was allowed exparte by the learned Subordinate Judge by an order dated 21.04.1997 thereby condoning the delay. Aggrieved over the said order, the petitioner herein has filed this Civil Revision Petition.

4. Heard both sides.

5. The main contention of the learned Counsel for the petitioner is that, no notice was served on him as required under Order 5 of C.P.C., and there is a violation of Order 5 Rules 17, 19 and 20 of C.P.C., and thus the order of the learned Subordinate Judge setting the petitioner as exparte is not legal. The further contention of the learned Counsel for the petitioner is that, the lower Court has condoned the delay, though there has been no satisfactory explanation offered by the respondents for the delay.

6. Per Contra, the learned Counsel for the respondents would contend that the procedure as contemplated under Order 5 Rule 17, 19 and 20 of C.P.C., have been strictly followed by the lower Court and the lower Court was right in ordering substituted service through newspaper as provided under Order 5 Rule 20 C.P.C. He would further contend that the delay has been properly explained by the respondents.

7. I have given anxious consideration to the rival contentions made by the learned Counsel for the petitioner and the learned Counsel for the respondents and also I have perused the records available. In so far as, the first contention of the learned Counsel for the petitioner is concerned, it is seen from the records that the Interlocutory Application had came up for hearing before the learned Subordinate Judge, on 08.11.2004 on which date the learned Subordinate Judge had ordered notice to the respondents by 22.12.2004. On 22.12.2004 batta was paid by the respondents herein and the learned Subordinate Judge ordered re-issuance of notice to the petitioner and the case was adjourned to 04.03.2005. On 05.03.2005, the learned Subordinate Judge has passed an order directing the petitioners to effect paper publication in one issue of Dinakaran Daily by 05.04.2005. Again on 05.04.2005, the learned Subordinate Judge has recorded that paper publication had been effected. The respondent was called absent and therefore he was set exparte. Then the case was posted to 12.04.2005 for hearing. Finally on 12.04.2005, after hearing the arguments of the learned Government Pleader, he has allowed the petition. From the above narration, it is very clear that the learned Subordinate Judge has not followed the mandatory procedure contained under Order 5 Rule 17, 18, 19 and 20 of C.P.C. As noted above on 22.12.2004, the learned Subordinate Judge had ordered re-issuance notice to the petitioners. After that, on 05.03.2005 suddenly, the learned Subordinate Judge has ordered for paper publication and there are no reasons stated as to why paper publication was ordered. A plain reading of Order 5 Rule 20(1) and (1A) of C.P.C would show that the Court should have satisfied itself that there are reasons to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. If only such a satisfaction is arrived at and after recording the said satisfaction, the Court is empowered to order for substituted service including an advertisement in any

newspaper. But in this case, the said procedure has not followed by the learned Subordinate Judge. Further, it is not seen from the docket orders, whether prior to the order of the paper publication, notice was really served on the petitioner herein or not. These facts would go to show that the learned Subordinate Judge has not dealt with the matter by following the above said mandatory procedure and therefore in the interest of justice, I feel it is absolutely necessary to set aside the exparte order of the lower Court and to remand the matter back to the learned Subordinate Judge to pass orders in accordance with law after affording opportunity to both the parties. Since, I am allowing the petition on the above ground alone, the other contentions raised by the learned Counsel for both parties are left open and I am not expressing any opinion regarding the same.

8. Considering the fact that the suit is of the year 1993, I deem it necessary to direct the learned Subordinate Judge to dispose off the Interlocutory Application, in accordance with law after affording opportunity to both the parties, within a period of one month from the date of receipt of a copy of this order.

9. In the result, the order of the learned Subordinate Judge, Padmanabhapuram dated 12.04.2005 made in I.A. No. 176 of 2004 in A.S.S.R. No. 5835 of 2004 is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected M.P. is also closed.