

C.K. LOKESH

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v.

P.E. PANDURANGA NAIDU

SEPTEMBER 20, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

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*Code of Civil procedure, 1908 :*

*Order 5 Rule 20A, Order 9 Rule 13—Suit for declaration of title and for injunction restraining the appellant from interfering with suit property—Personal service not effected on the appellant—Substituted service by publication in the newspaper directed by the Court also not reaching the appellant set ex-parte—On becoming aware appellant filing application for setting aside the ex-parte decree and order—Allowed by District Judge—Single Judge setting aside the same—On appeal held : the District Judge was right in holding that the appellant had filed the application to set aside the ex-parte order within 30 days from the date of knowledge—High Court was in error in interfering with the same—Appellant to appear before the District Judge and file a written statement—The District Judge to dispose of the suit as expeditiously as possible.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13086 of 1996.

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From the Judgment and Order dated 7.12.95 of the Madras High Court in C.R.P. No. 2566 of 1995.

R. Mohan and T. Raja for the Appellant.

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A.T.M. Sampath and V. Balaji for the Respondent.

The following Order of the Court was delivered :

Leave granted.

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We have heard learned counsel on both sides.

The appellant is defendant in O.S. No. 288/84 on the file of the District Munsif Court, Cheyyar. The appellant was set ex-parte on March 30, 1985. The respondent filed a suit for declaration of his title and for

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A injunction restraining the appellant from interfering with the suit property, i.e., the land to the extent of 2 acres and 30 cents. It is admitted that personal service was not effected on the appellant. It would appear that the Court has directed to effect the substitute service by publication in the newspaper but that also did not reach the appellant. On becoming aware of the *ex-parte* decree and order in 1990, the appellant filed an application under Order 9, Rule 13, C.P.C. within 30 days from the date of his knowledge to set aside the decree and order. He filed an application under Section 5 of the Limitation Act to condone the delay. The district Judge condoned the delay holding that :

C "I uphold the submissions of the petitioner that the petitioner had no knowledge of the case nor he was aware of the pending case and, therefore, he is entitled to prefer this petition within 30 days from the date of knowledge. hence the petition is allowed."

D Against the aforesaid order, the respondent carried the matter in revision. The learned single Judge allowed the petition setting aside the order passed by the District Judge. Thus, this appeal by special leave.

E It is contended by Sri Sampath, learned counsel for the respondent, that the respondent had taken all the steps available under Order 5 CPC including of effecting service through substitute service under Rule 20A, Order 5 CPC. Therefore, the Court was right in setting the appellant *ex parte* and passing the *ex-parte* decree. The learned District Judge after going through the entire material on record came to the above conclusion that the appellant had not been served with a notice and, therefore, he was entitled to file the application under Article 123 of the Schedule of Limitation act, which is 30 days from the date of knowledge. Accordingly, the application came to be filed, though belated by 2015 days. Under these circumstances, the learned District Judge was right in holding that the appellant had filed the application to set aside the *ex- parte* appeal within 30 days from the date of knowledge. The High Court was clearly in error in interfering with the order passed by the District Judge.

G The appeal is accordingly allowed. The order of the High Court is set aside and that of the District Judge stands confirmed. The appellant is directed to appear before the District Judge on 28th October, 1996 and he should also file a written statement. The learned District Judge is directed to dispose of the suit as expeditiously as possible. No costs.

H G.N.

Appeal allowed.