



C.R.P.(MD)No.2513 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2513 of 2023
and
C.M.P.(MD)No.13063 of 2023

V.Vetrivel

... Petitioner/
Petitioner/
1st Defendant

Vs.

1. Jeayachitramary

... 1st Respondent/
1st Respondent/
Plaintiff

2. R.L.Selvi

... 2nd Respondent/
2nd Respondent/
4th Defendant

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 04.08.2023 made in I.A.No.4 of 2023 in O.S.No.28 of 2016 on the file of the learned Subordinate Judge, Valliyoor and allow the Civil Revision Petition.

For Petitioner : Mr.V.Sasikumar

For R1 : Mr.M.Subbiah



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.4 of 2023 in O.S.No.28 of 2016 dated 04.08.2023 on the file of the Subordinate Court, Valliyoor, dismissing the petition filed Order 9 Rule 7 C.P.C.

2. It is not in dispute that the first respondent/plaintiff has filed the above suit for declaration and for permanent injunction, that the defendants 2 and 3 therein had remained *ex parte*, that both the revision petitioner/first defendant and the second respondent/fourth defendant alone had contested the suit and that thereafter, since the revision petitioner/first defendant has not chosen to file written statement, he was set *ex parte* on 26.08.2016.

3. When the suit is pending for the second respondent/fourth defendant's further evidence, the present application came to be filed by the revision petitioner/first defendant for setting aside the *ex parte* order dated 26.08.2016. The learned Subordinate Judge, by observing that the revision petitioner/first defendant has not offered any acceptable reason or



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explanation for not appearing before the Court for all the seven years and he has not produced any material to show that he was suffering from jaundice for seven years and that the above application came to be filed only to drag on the matter and to help the second respondent/fourth defendant, who is contesting the suit, has dismissed the application.

4. Heard the learned counsel appearing for the revision petitioner/first defendant and the learned counsel appearing for the first respondent/plaintiff.

5. When the matter is taken up for hearing today, the learned counsel appearing for the revision petitioner/first defendant would submit that the revision petitioner/first defendant is ready to file written statement immediately and also undertakes to take part in the trial, as it stands now and they will not file any application for recalling the witnesses, who were already examined.

6. Recording the above said undertaking, this Civil Revision Petition is allowed and the order passed in I.A.No.4 of 2023 in O.S.No.28



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of 2016 dated 04.08.2023 is set aside and the *ex parte* order dated 26.08.2016 passed in O.S.No.28 of 2016 is also set aside. The revision petitioner is directed to file written statement before the trial Court within a period of one week from the date of receipt of copy of this order and on such filing, the learned Subordinate Judge, Valliyoor, is directed to frame additional issues, if any and proceed with the trial and dispose of the suit in O.S.No.28 of 2016 within a period of one month thereafter. The revision petitioner is further directed to pay cost of **Rs.2,000/- (Rupees Two Thousand only)** to the first respondent on or before 08.11.2023. Both the parties are directed to appear before the trial Court on 08.11.2023. Consequently, connected Miscellaneous Petition is closed.

05.10.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



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To

1. The Subordinate Court,
Valliyoor.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
C.R.P.(MD)No.2513 of 2023
and
C.M.P.(MD)No.13063 of 2023

Dated : 05.10.2023