

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2822 OF 2016

1. Vachala
2. Jayakumar : Petitioners
versus

Krishnan : Respondent

PRAYER: Revision filed against the order dated 3.2.2016, in I.A.No.499 of 2015 in O.S.No.447 of 2014 on the file of the Sub Court, Arakkonam.

For petitioner :: Mr.P.Mani

For respondents :: No appearance

ORDER

The petitioners were arrayed as defendants in O.S.No.447 of 2014. The petitioners were set exparte on 11 October 2011. The petitioners filed an application in I.A.No.499 of 2015 to set aside the exparte order. The learned trial Judge dismissed the application on the ground that the petitioners were having knowledge about the proceedings and as such, they have not made out a case to set aside the exparte order.

2. Heard the learned counsel for the petitioners.

3. None appears on behalf of the respondent in spite of printing the name of the respondent, after service.

4. The petitioners were set exparte on 11 October 2011. It is true that the application was filed only after a period of four years. However, the fact remains that the suit for partition was pending even on the date on which the application in I.A.No.499 of 2015 was filed by the petitioners. The suit being one for partition, the Trial Court ought to have taken a lenient view and set aside the exparte order. The Trial Court was too technical while making an observation that the petitioners were aware of the exparte order and even then, they did not file application within a reasonable period. Since the matter is pending before the Trial Court, I deem it fit to set aside the order in I.A.No.499 of 2015.

5. In the result, the order dated 3 February 2016 is set aside. The application in I.A.No.499 of 2015 is allowed. The petitioners are given time till 28 November 2016 to file written statement. The petitioners shall cooperate with the Trial Court for an early disposal of the matter. In case written statement is not filed within the time permitted and there is a deliberate attempt to drag on the matter, it is open to the Trial Court to dispose of the matter on the basis of available materials.

6. The civil revision petition is allowed with the above observation. No costs. Consequently, M.P.No.14334 of 2016 is closed.

03.11.2016

Index:Yes/no
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To
The Sub Court, Arakkonam.

K.K.SASIDHARAN, J.

(tar)

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