

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 01.03.2016**

**CORAM**

**THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR**

**C.R.P (PD) No.596 of 2016**  
**&**  
**C.M.P.No.3171 of 2016**

1.Govindan  
2.G.Prakash

... Petitioners

VS.

1.Murugan  
2.Saraswathy  
3.Thamaraiselvi  
4.Kavitha  
5.Kannan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the learned Additional District Judge, Dharmapuri dated 06.01.2016 returning I.A.SR.No.1873 of 2015 in O.S.No.45 of 2014 filed by the petitioners under Order IX Rule 13 of the Code of the Civil Procedure.

For Petitioners : Mr.R.Subramanian

**ORDER**

Heard the submissions made by Mr.R.Subramanian, learned counsel for the petitioners.

2. The present petition has been filed under Article 227 of the Constitution of India against the unwarranted and unnecessary return of the petition filed under Order IX Rule 13 CPC to set aside the *ex parte* decree passed against the petitioners herein. Since the revision is against the unnecessary return of the unnumbered petition and the power of superintendence has been invoked, this Court feels that it is unnecessary to issue notice to the other side.

3. One Ranganathan and the first respondent Murugan filed the Original Suit in O.S.No.45 of 2014 on the file of the Additional District Judge, Dharmapuri for specific performance. The petitioners herein were the defendants in the said suit. Though the petitioners entered appearance in the said suit, they did not file the written statement within the time allowed in the rules and within the further time extended by the trial Court. Hence, they were set *ex parte* and an *ex parte* trial was conducted resulting in the passing of an *ex parte* decree on 23.03.2015. Within seven days thereafter, on 30.03.2015, the

petitioners filed an application in I.A.SR.No.1873 of 2015 under Order IX Rule 13 CPC to set aside the ex parte decree. A written statement was also filed along with the said petition. The said petition was returned pointing out certain defects. It was subsequently re-presented with a delay along with an application to condone the delay in re-presentation. The petition to condone the delay in re-presentation was allowed. However, during the interregnum, the first plaintiff Ranganathan died. Hence, his legal representatives were shown as Respondents 3 to 6 in the said application and it was presented. The same was also returned stating that an application under Order XXII Rule 3 CPC should be filed. Again the said application was re-presented along with an application under Order XXII Rule 3 CPC. The trial Court again returned the petition stating that Order IX Rule 13 CPC petition could not be entertained since no order was passed impleading the legal representatives of the deceased first plaintiff. Not stopping with that, the trial Court also returned the application under Order XXII Rule 3 CPC stating that since the application under Order IX Rule 13 CPC was returned, the petition under Order XXII Rule 3 CPC was also returned.

4.The said procedure adopted by the trial Court shows either lack of knowledge or determination not to entertain petitions. Such an attitude cannot be relished by this Court. The said procedure adopted shows failure to exercise jurisdiction conferred on the Court. Hence, even though no order allowing or dismissing the petitions came to be passed, this Court feels that it is a fit case in which a direction to take those petitions on file and dispose of them on merits should be issued.

Accordingly, the Civil Revision Petition is disposed of issuing a direction to the trial Court to take I.A (SR) No.1873 of 2015 and I.A (SR) No.2213 of 2015 on file and dispose them of on merits. The petitions and the affidavits (originals) returned by the trial Court, which have been filed along with the Civil Revision Petition, are directed to be returned to the counsel for the petitioner to enable the petitioner to re-present the same. Such re-presentation shall be made within two weeks from today. No costs. Consequently, the connected miscellaneous petition is closed.

**01.03.2016**

Index: Yes/No  
Internet: yes/No  
gpa

To

1. The Additional District Judge  
Dharmapuri

**P.R.SHIVAKUMAR.J.,**

gpa

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