

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD). No.4066 of 2017

and C.M.P.No.19072 of 2017

R.Vasantha Kumar

... Petitioner

Vs.

1. Sellammal

2. Velumani

3. Kalpana

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 17.06.2016 made in I.A.No.20 of 2015 in O.S.No.1426 of 2008 on the file of the III Additional District Munsif, Coimbatore.

For Petitioner : Mr.K.Sukumaran

For Respondents : Mr.P.M.Vijaya kumar (for R1)
Mr.S.S.Swaminathan (for R2 & R3)

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ORDER

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The relief sought for in the revision petition is to set aside the order dated 17.06.2016 made in I.A.No.20 of 2015 in O.S.No.1426 of 2008 on the file of the III Additional District Munsif, Coimbatore.

2. The second and third respondents filed a suit against the revision petitioner for partition in O.S.No.1426 of 2008 before the learned District Munsif, Coimbatore.

3. During the pendency of the suit, the first respondent remained exparte and the exparte order was passed against him on 23.12.2008 . Subsequently, the pleadings of the revision petitioner and other respondents were completed and posted for framing issues. After framing issues, the trial was commenced. In the trial proceedings, the plaintiff side evidence was completed and the defendant side evidence was commenced. At that stage, the first respondent filed an Interlocutory application under Order IX, Rule 7 and Section 151 of C.P.C. in I.A.No.20 of 2015 in O.S.No.1426 of 2008 before the learned III Additional District Munsif, Coimbatore, to set aside the exparte order and to receive the written statement. The application was allowed and the written statement was received.

4. Aggrieved against the said order dated 17.06.2016, the revision petitioner/13th defendant is before this Court by way of the revision petition.

5. Heard both sides and perused the materials available on record.

6. The 7th defendant in the suit filed an application in I.A.No 20 of 2015, the plaintiffs and other respondents have not made any objections. The revision petitioner/13th defendant only raised objection in his counter and stated that the petition is filed belatedly and it should have been filed before examining the witnesses. There is no limitation to file an application to set aside the exparte order, under Order IX, Rule 7 of C.P.C. they can file it at any stage during pendency of the suit. At the same time, if any one of the defendants remain exparte, later on they can participate in the suit proceedings even without filing any application to set aside the exparte order. No doubt, even according to the learned counsel for the petitioner, they can only participate at the stage of the proceedings subsequently when he appeared, but cannot go back to the original proceedings at the stage of exparte order was passed.

7. The contention of the learned counsel for the petitioner is not acceptable. The defendant who remains exparte even without filing any application to set aside the exparte order passed against him, if he wants he can participate in the suit proceedings at the same time he can participate only from the stage on which he subsequently entered appearance. Whereas in this case, the respondents filed an application to set aside the exparte order

passed by the trial Court, the trial Court also allowed the petition and also set aside the exparte order. Except the revision petitioner, no one has made any objection. Since there is no limitation to file application under Order IX Rule 7, the respondents can file application at any stage of the pending suit. Once the order is set aside, they have right to start from original stage at where they were remained exparte. Hence, there is no serious prejudice would be caused to the revision petitioner if the written statement is received and proceed further. It is relevant to mention that the suit is of the year 2008 and the evidence of the defendants is not completed in the suit.

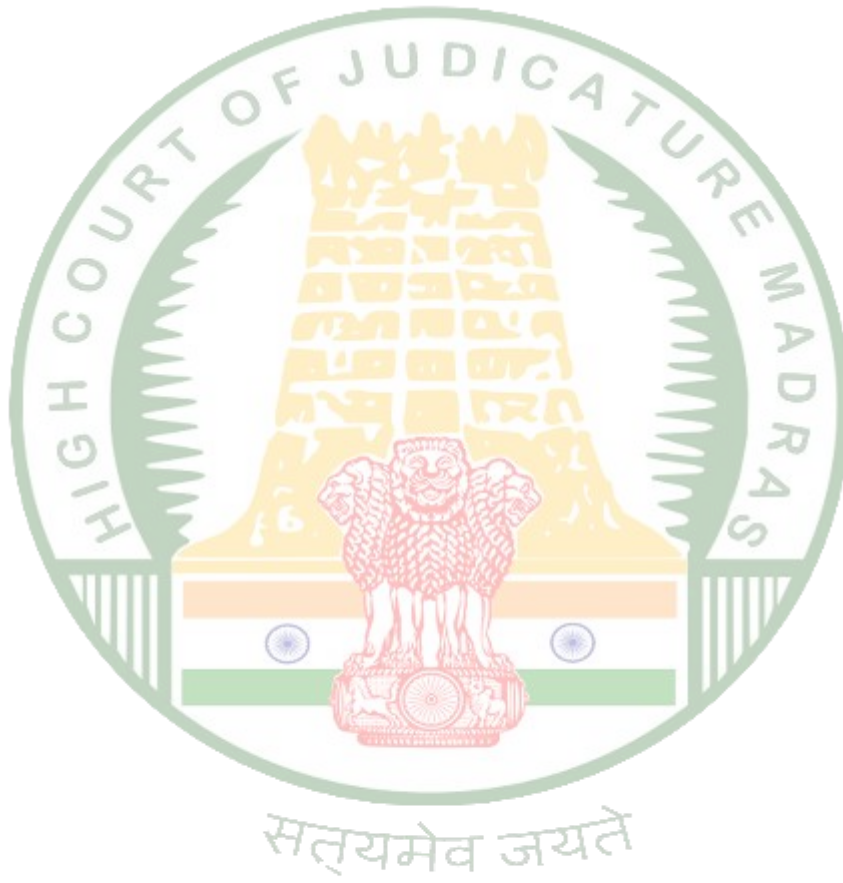
8. Therefore, under these circumstances, there is no illegality or irregularity in the order passed by the trial Court. This Court finds there is no valid reason to interfere with the order passed by the trial Court and finds no merits in this revision petition.

9. In the result, the Civil Revision petition is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

19.06.2018

Index:Yes/No
Speaking order / Non speaking order
vum

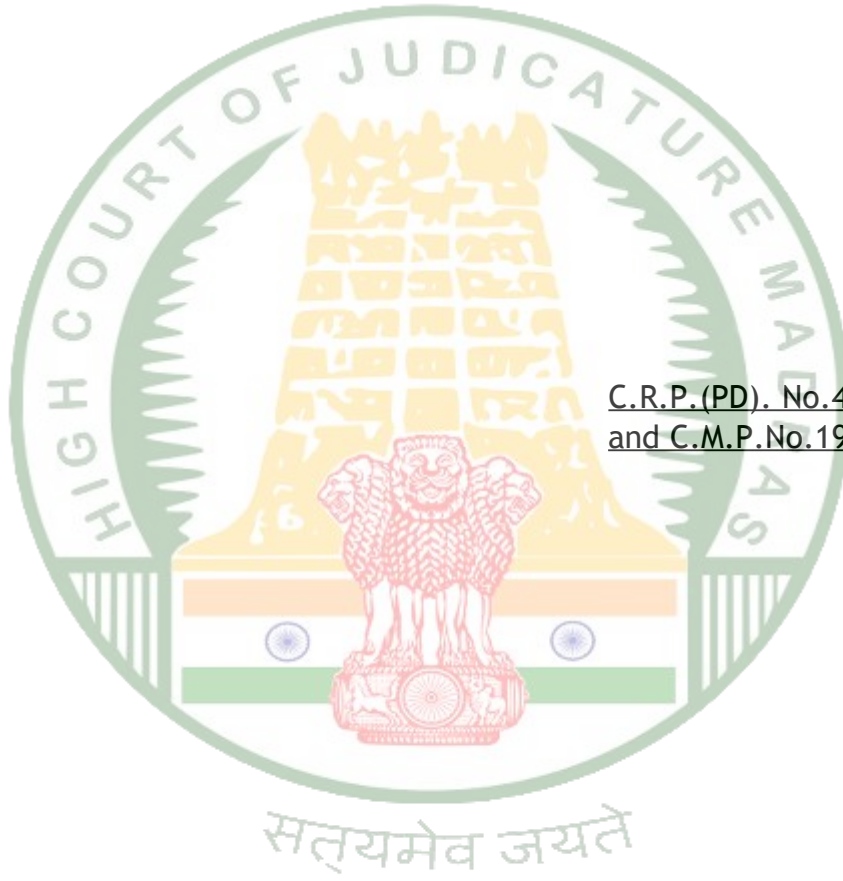
To
The III Additional District Munsif,
Coimbatore.



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P.VELMURUGAN, J.,

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