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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.09.2018
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.R.P.(MD).Nos.1898 to 1900 of 2018 and
C.M.P.(MD)No.8239 of 2018

C.R.P.(MD)No.1898 of 2018

1. Vimala
2. Suganya
3. Manibharathi
4. Kavibharathi

... Revision Petitioners/Petitioners/
Defendants

Vs.

Karthiga

... Respondent/Respondent/Plaintiff

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the fair and order and decretal order dated 19.04.2017 passed in I.A.No.516 of 2017 in I.A.No.486 of 2015 in O.S.No.38 of 2014 by the Sub Court, Uthamapalayam and set aside the same.

C.R.P.(MD)No.1899 of 2018

1. Vimala
2. Suganya
3. Manibharathi
4. Kavibharathi

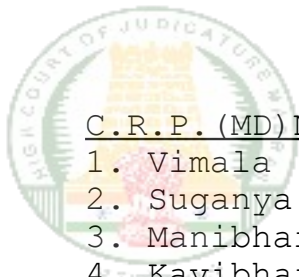
... Revision Petitioners/Petitioners/
Petitioners/Defendants

Vs.

Karthiga

... Respondent/Respondent/
Respondent/Plaintiff

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the fair and order and decretal order dated 19.04.2017 passed in I.A.No.461 of 2016 in I.A.No.487 of 2015 in O.S.No.38 of 2014 by the Sub Court, Uthamapalayam and set aside the same.



C.R.P. (MD) No.1900 of 2018

1. Vimala
2. Suganya
3. Manibharathi
4. Kavibharathi

... Petitioners/Petitioners/
Petitioners/Defendants

WEB COPY

Vs.

Karthiga

... Respondent/Respondent/
Respondent/Plaintiff

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the fair and order and decretal order dated 19.04.2017 passed in I.A.No.460 of 2016 in I.A.No.486 of 2015 in O.S.No.38 of 2014 by the Sub Court, Uthamapalayam and set aside the same.

(in all C.R.Ps.)

For Petitioners : Mr.D.Malaichamy
For Respondent : Mr.R.Saravanan

C O M M O N O R D E R

The defendants in O.S.No.38 of 2014 on the file of the Subordinate Court, Uthamapalayam, are the Revision petitioners herein. The respondent herein filed the said suit for recovery of a sum of Rs.1,27,533/- from the defendants. The plaintiff adduced evidence on her side. Thereafter, the defendants ought to have let in evidence. But then, they did not do so. Hence, the Court below proceeded to decree the suit as prayed for by Judgment and Decree dated 25.01.2016. An execution petition was also filed. In the meanwhile, these Interlocutory applications were filed on the side of the defendants seeking various reliefs and the same were disposed on merits. Questioning the orders passed by the Court below, these Civil Revision petitions have been filed.

2. The learned counsel appearing for the Revision petitioners pointed out that Order 17 Rule 3 of C.P.C is applicable to this case. Order 17 Rule 3 of C.P.C., reads as follows:-

"Court May proceed notwithstanding either party fails to produce evidence, etc- Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed,



(a) if the parties are present, proceed to decide the suit forthwith; or

(b) if the parties are, or any of them is, absent, proceed under rule 2."

3. If the parties are present, the Court below could have proceeded to decide the suit forthwith. But in this case, the Revision petitioners were not present in person. Only their counsel was present. The presence of the counsel could not have been equated to the presence of the parties. Hence, the decree passed by the Court below ought to be treated as one passed in terms of Order 17 Rule 2 of C.P.C.

4. In this view of the matter, the orders passed by the Court below are liable to be set aside.

5. It is true that in this case, the Revision petitioners have also been dragging on the proceedings. Therefore, the learned counsel for the Revision petitioners submit that they would pay a sum of Rs.7,500/- as cost to the plaintiff. The Revision petitioners shall take a Demand Draft for the said amount in favour of the plaintiff and hand over the same to the plaintiff within a period of six weeks from the date of receipt of a copy of this order. The Revision petitioners are given one more opportunity to contest the suit proceedings on merits. The Court below shall dispose of O.S.No.38 of 2014 within a period of four months, thereafter.

6. With these directions, the Civil Revision petitions stand allowed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Subordinate Judge,
Uthamapalayam.

- 1 CC TO Mr.D.Malaichamy, ADVOCATE IN SR No. 86422.
- + 1 CC TO Mr.R.Saravanan , ADVOCATE IN SR No. 86638.

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C.M.P. (MD) No.8239 of 2018