

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.PD.No.2401 of 2012

& M.P.No.1 of 2012

1. Mohideen Thambi (died)
2. Idroos umal
3. Beevi Fathima
4. Balkees Ummal
5. Zulaiha Ummal
6. Mohammed Meera Umma Haseena
7. Noor Mohamed Ayha
8. Seyed Mohamed

Petitioners 2 to 8 brought on record
by an order dated 16.04.2019 in
C.M.P. Nos.8888 & 8892 of 2019
in C.R.P.No.2401 of 2012

.... Petitioners

1. Abdul Allam
2. P.R.Abdul Qadeer

.... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated Nil passed in memo dated 21.06.2011 in O.S.No.181 of 2007 on the file of the Court of District Munsif, Ranipet.

For Petitioners : Mr.T.P.Prabakaran

For Respondents : Mr.K.Umar

ORDER

Aggrieved over the order passed in a memo dated 21.06.2011, by the learned District Munsif, Ranipet, the deceased first petitioner, who is the first defendant in the said suit, has preferred this Civil Revision Petition.

2. Before the trial Court on 29.10.2007, the respondents 1 & 2 herein filed a suit in O.S.No.181 of 2007 as against the deceased first petitioner/first defendant and eight others and sought for the relief of declaration declaring that the respondents 1 & 2 are the absolute owner of the suit schedule property. Consequently, they prayed for the relief of permanent injunction restraining all the defendants from interfering with his peaceful possession and enjoyment of the property.

3. On 19.02.2008, when the suit was posted for appearance of the first defendant ie., the petitioner herein, has not appeared before the trial Court. Hence, the learned District Munsif, Ranipet, passed an order of exparte against the petitioner and two others. After passing the order of exparte, issues have been framed and the suit filed by the respondents 1 & 2 were progressed against the other defendants in examining the plaintiffs' side witnesses. While at the time the suit was

posted for examination of defendants' side evidences, the deceased first petitioner/first defendant filed an application for setting aside the exparte order and the same was ordered by the learned District Munsif, Ranipet, on 25.03.2011.

4. After three months from the date of setting aside the exparte order, ie., on 21.06.2011, the deceased first petitioner filed a memo for adopting the written statement filed by the defendants D4 to D6 as the written statement of D1 to D3. The learned District Munsif, Ranipet, rejected the memo filed by the deceased first petitioner. Aggrieved over the said order, this Civil Revision Petition has been arisen.

5. It is the basic necessity provided under the Civil Procedure Code that, it is the duty of the Court to give opportunity to the parties to file a written statement immediately after setting aside the exparte order. But here in the case on hand, only because of the reason that the case was posted for defendants' side evidence, the Court below refused to receive the written statement filed by the deceased first petitioner by way of memo. If the said memo is not recorded, the same may amounts to non filing of written statement by D1 to D3. Even

though as of now the first petitioner herein is no more and his legal representatives are added as parties to the proceedings. Without knowing the defence set out in the written statement, they cannot proceed with the case. Therefore, the legal representatives of the deceased first petitioner loss their right to present the case in a proper manner.

6. So, I am of the opinion that the order passed by the learned District Munsif, Ranipet is liable to be interfered and the memo filed by the deceased first petitioner is necessarily to be accepted, through which the deceased first petitioner is permitted to file his written statement by way of memo. So, I am of the opinion that this Civil Revision Petition deserves to be allowed. More over, the suit in respect to the claim made by the respondents filed in the year 2007, hence it is appropriate to give direction to the learned District Munsif, Ranipet, to dispose of the matter within a time frame. Accordingly, the learned District Munsif, Ranipet is directed to dispose of the suit in O.S.No.181 of 2007, within a period of six months from the date of receipt of a copy of this Order.

7. With the above direction, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

13.09.2019

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order

rts

To

The District Munsif Court,
Ranipet.



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R.PONGIAPPAN, J.

rts



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