

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

**C.R.P(PD)No.3777 of 2013
and
M.P.No.1 of 2013**

1.Mr.Syed Wahab
2.Mrs.Nazim
3.Mr.Syed Ameen

...Petitioners

Versus

1.Mrs.Khurshid
2.Mrs.Nazim
3.Mrs.Jarina
4.Mrs.Mubeena

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 23.08.2013 in I.A.No.213 of 2013 in O.S.No.25 of 2012 on the file of the Subordinate Judge at Tirupattur, Vellore District.

For Petitioners : Mr.G.Rangan

For Respondents : Mr.V.Jeevagiridharan

ORDER

The above Civil Revision Petition has been filed against the order passed by the learned Subordinate Judge, Tirupattur, Vellore District in I.A.No.213 of 2013 in O.S.No.25 of 2012 dated 23.08.2013, in and by which the learned Judge had dismissed the Application filed by the petitioners herein under Order VIII Rule 9 of C.P.C to file an additional written statement.

2. The suit has been originally filed for claiming a partition in the suit property and it appears that originally the third defendant had filed the written statement. Therefore, the defendants 1 & 2 had filed a Memo adopting the statement of the third defendant. Further, the defendants 1 & 2 have set ex-parte. Thereafter, an Interlocutory Application in I.A.No.213 of 2013 in O.S.No.25 of 2012 was filed by the petitioners/defendants under Order VIII Rule 9 of C.P.C to file an additional written statement in the suit.

3. It is to be noted that proof affidavit was filed on the side of the plaintiffs at the stage the trial court had dismissed the Interlocutory Application filed by the petitioners/defendants in I.A.No.213 of 2013 in O.S.No.25 of 2012.

4. Heard Mr.G.Rangan, learned counsel for revision petitioners and Mr.V.Jeevagiridharan, learned counsel for respondents.

5. Considering the fact that originally the defendants 1 & 2 have not filed the written statement only filed a Memo which adopting the statement of the third defendant, without seeing the merits of the case, the trial Court had rejected the entire written statement, holding that Interlocutory Application filed by the petitioners/defendants in I.A.No.213 of 2013 in O.S.No.25 of 2012 under Order VIII Rule 9 of C.P.C is not correct. The trial Court not even given a chance to the parties to place their pleadings before the Court. Hence, this Court is inclined to set aside the order of the trial Court.

6. Accordingly, the order passed by the learned Subordinate Judge, Tirupattur, Vellore District in I.A.No.213 of 2013 in O.S.No.25 of 2012 dated 23.08.2013 is set aside and the trial Court is directed to take the additional written statement filed by the revision petitioners on file. The plaintiffs are also granted liberty to file a reply statement to such additional written statement within a period of one month from the date of receipt of a copy of this order and thereafter, the trial Court is further directed to frame additional issues if any, after affording an opportunity of hearing to the plaintiffs to adduce a fresh evidence and conclude the trial within a period of six months.

7. In the result, this Civil Revision Petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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mrr
Index : Yes/No

To

The Subordinate Judge,
Tirupattur,
Vellore District.



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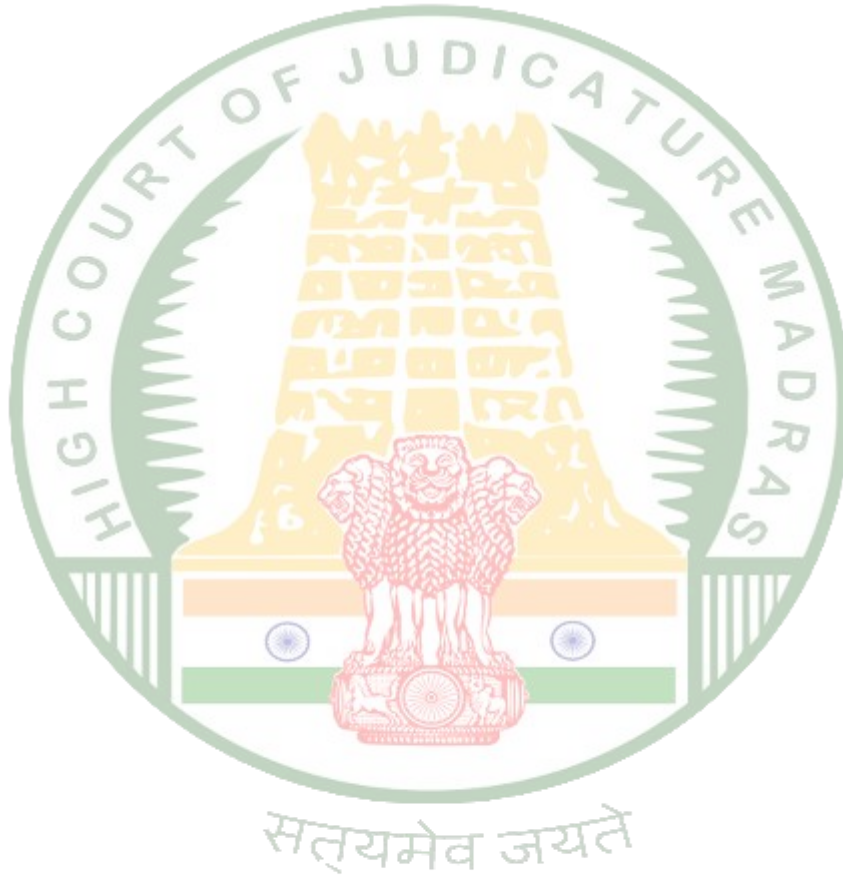
N.SATHISH KUMAR, J.,



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