

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

C R P No.3508 of 2018
and C.M.P.No.19655 of 2018

1.R.P.Rasiannan
2.Rajendran @ Appu

.... Petitioners
Vs.

Manimozhi

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 04.04.2017 made in I.A.No.01 of 2017 in O.S.No.05 of 2015 on the file of the IV Additional District and Sessions Judge, Erode.

For Petitioners : Mr.P.Dinesh Kumar.

For Respondent : Mr.N.Sankara Vadivel.

O R D E R

The order under challenge in the present revision is dismissal of the petitioner's application filed under order 9 Rule 7 CPC, for the reason that the petitioners herein have not paid the cost ordered in I.A.No.01 of 2017 in OS.No.05 of 2015. It is seen that by an order dated 04.04.2017, the petitioner's application in I.A.No.01 of 2017 seeking to set aside the exparte order came to be allowed on condition that the petitioner pays a cost of Rs.500/-.

2. It is the submission of the learned counsel for the petitioners that pursuant to the order, the petitioner's counsel could not locate the respondent counsel before the trial Court. Subsequently, on 08.11.2017, the suit itself came to be dismissed for default and the same was restored only on 12.09.2018. Hence, the petitioners were constrained to file this civil revision petition.

3. The suit is one for partition. It is the submission of the learned counsel for the petitioners that they have valid grounds in the said suit and if the exparte decree is not set aside, they would be put to irreparable loss and hardship.

4. Since, the only ground on which the petitioner's application came to be rejected is that they have not paid the cost amount, it would be appropriate that the petitioners be given one further opportunity by putting them on some terms.

5. The learned counsel for the respondent, though had objected the grounds raised by the petitioners in present Civil Revision Petition, in my view, by taking into account, the relief sought for in the main suit, this Court is inclined to take a lenient view.

6. In the light of the above observation, the order made in I.A.No.1 of 2017 in OS.No.5 of 2015 dated 04.04.2017 is hereby set aside. Consequently, the exparte order passed in the main suit in O.S.No.05 of 2015 dated 08.11.2017 is also set aside, on condition that the petitioners pays a sum of Rs.5,000/- to the respondent herein and produce the proof for payment before the trial Court within a period of 10 days from the date of receipt of a copy of this order.

7. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

sbn/tsh

To

1. The IV Additional District and Sessions Judge
Erode.

+1 CC to Mr.R. Ramkumar, Advocate sr 3752.

+1 CC to Mr.N.Sankara Vadivel, Advocate sr 4142.

C R P.PD. No.3508 of 2018
and C.M.P.No.19655 of 2018

SP(07/02/2019)