



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2020

CORAM:

THE HONOURABLE **MR.JUSTICE R.SUBRAMANIAN****C.R.P. (MD) No.1226 of 2011****and****M.P. (MD) No.1 of 2011**Kandasamy ... Petitioner / 3rd Respondent / 3rd respondent

Vs.

1.Radhakrishnan ...1st respondent / appellant / petitioner

2.Subramani

3.Muthukumar ...Respondents 2 and 3 / Respondents 1 and 2 /
Respondents 2 and 3

4.Kulandayee

5.Arukkani Ammal

6.Sellammal

7.Palaniammal

8.Arukkani

9.Parameshwari

10.Padmavathi

11.Nallasivam

12.Selvamani

13.Subramaniam

14.Palanisamy

15.Jegadesan ... Respondents 4 to 15 / Respondents 4 to 15
Respondents 4 to 15

PRAYER: This Petition is filed under Section 115 of Civil Procedure Code, against the order dated 10.12.2010 in I.A.No.211 of 2010 in A.S.No.39 of 2007 on the file of the Additional Subordinate Judge, Karur.

For Petitioner : Mr.Joshua for Mr.K.Govindarajan

For R-12 : B.Saravanan

For R2 to R6 and

R8 to R15 : No Appearance

**ORDER**

This Civil Revision Petition has been filed against the order of the lower appellate Court in I.A.No.211 of 2010 in A.S.No.39 of 2007 on the file of the Additional Subordinate Judge, Karur, seeking to restore the appeal, which was dismissed for default on 15.09.2009.

2.The appeal in A.S.No.39 of 2007 arose out of a suit for partition filed by the appellant therein. The suit for partition was dismissed by the trial Court. Aggrieved, an appeal came to be filed. It appears that the appeal was listed for arguments on various dates between 14.08.2009 to 15.09.2009. Since the appellant was absent and there was no representation on his side, the appeal came to be dismissed for default on 15.09.2009. The application in I.A.No.211 of 2010 was filed seeking to restore the appeal. The lower appellate Court, considering the reasons assigned and in the interest of justice, allowed the application on payment of cost of Rs.3,000/-. Aggrieved, the petitioner, who was the third respondent in the appeal, has come up with this Civil Revision Petition.

3.I have heard Mr.Joshua, learned counsel representing for Mr.K.Govindarajan, learned counsel appearing for the petitioner and Mr.B.Saravanan, learned counsel appearing for the 12th respondent. The other respondents, though served are not appearing either in person or through counsel, duly instructed.

4.It is seen from the records that the Civil Revision Petition was dismissed as against the first respondent on 25.10.2013. Be that as it may, I do not find any material irregularity or illegal exercise of jurisdiction in the order of the Court below. No doubt, the appeal was listed for hearing on four occasions, only on fifth occasion, that is on 15.09.2009, it was dismissed for default. It is a fundamental principle of law that previous conduct of the party should not be taken into account for deciding a case of setting aside exparte orders. The lower appellate Court has rightly concluded that the appellant deserves an opportunity to argue the appeal on merits. I do not think that such exercise of discretion by the lower appellate Court could be interfered with, particularly, in a Revision under Section 115 of Code of Civil Procedure. Hence, this Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

The Additional Subordinate Judge,
Karur.

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+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-323[F] dated 06/01/2020)

C.R.P. (MD) No. 1226 of 2011

and

M.P. (MD) No. 1 of 2011

03.01.2020

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SDS (22.01.2020) 3P-3C