



WEB COPY



C.R.PD.No.884 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No.884 of 2019

and

C.M.P.No.5754 of 2019

1.Soliyammal

2.Pavayee

3.Dhanapal

... Petitioners

Versus

1.Selvaraj

Karuppayee (Deceased)

... Respondent

[Cause title accepted vide Court Order

Dated 20.02.2019 made in CMP.No.4167 of 2019

in CRP SR.16551 of 2019 (PTAJ)]

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 03.11.2018 made in I.A.No.337 of 2018 in O.S.No.194 of 2015, before the learned Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioners : Mr.R.Marudhachalamurthy

For Respondent : Mr.M.V.Venkateseshan



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ORDER

The petitioners are challenging the order passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal, in I.A.No.337 of 2018 in O.S.No.194 of 2015, dated 03.11.2018.

2. The revision petitioners herein are the defendants in O.S.No.194 of 2015, filed by the respondent/ plaintiff for the relief of partition and separate possession before the learned District Judge, Namakkal. Ex-parte order was passed by the trial Court and hence the petitioner filed application in I.A.No.337 of 2018 in O.S.No.194 of 2015, before the learned Sessions (Fast Track Mahila) Judge, Namakkal, to set aside ex-parte order under Order 9 Rule 7 of CPC, which was objected by the plaintiff by filing his objections.

3. On hearing both sides, the trial Court concluded that the reasons stated by the defendants are not acceptable and also 6th defendant died on 03.08.2017. But without mentioning the above fact, they filed the above said application including him. Hence, the petition was dismissed. Aggrieved by the said order, the revision petitioners have filed this revision petition, contending that they have valid defence in the suit and the absence on the



particular day is not wilful for the reason, that the petitioners are women and not having proper knowledge to give instruction to their counsel.

4. The learned counsel for the respondent contended that in order to drag on the proceeding, knowing fully well, they remained ex-parte, and therefore the learned trial Judge has rightly dismissed the petition.

5. On considering both sides' submissions, and on a perusal of the records, it reveals that the plaintiff had filed the suit for partition against the 13th defendant including these revision petitioners. Some of the parties are more than 70 years old. It is also admitted that some of the defendants have contested the suit by filing their written statement, and due to the pendency of this petition, there are no progress in the suit.

6. Furthermore, all the revision petitioners are women and they also filed written statement along with the application. Since the suit is for partition, every party to the concerned are entitled to claim their right over the property. If they are not permitted to defend their case, their right to defend



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their claim over the property is deemed to be denied. The trial Court is a fact finding authority, where the evidence of both oral and documentary could be adduced, though the request of the revision petitioner is not reasonable but since they are hailed from village, and also contested the suit by filing written statement.

7. Considering the above facts, this Court is inclined to give fair opportunity to the revision petitioners to defend their claim before the trial court. Accordingly, the revision petition is allowed and the order passed by the trial Judge in I.A.No.337 of 2018 in O.S.No.194 of 2015 is set aside. As the parties concerned in the suit are more than 70 years, the learned trial Judge is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

29.10.2021

Index : Yes / No
Speaking Order: Yes/No
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To

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- 1.The Sessions (Fast Track Mahila) Judge,
Namakkal.
- 2.The Section Officer,
V.R.Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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