



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2021

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.1063 of 2019

and

CMP(MD)No.5801 of 2019

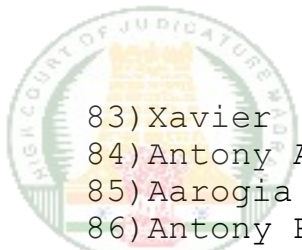
1)Alangaram
2)Mariadas ... Petitioners
(Petitioners for themselves and in the representative capacity of
Alavanthankulam '64 Ares Harijan Ploughmen Community')

vs.

1)Poolaiiah Thevar
2)S.Yesu
3)A.Ebreiciyaal
4)V.Michel Antonyaal
5)R.Subramanian
6)M.Francis
7)M.Murugan
8)C.Michel
9)K.Sebastian
10)K.Yesu Michel @ Jesuraja
11)Chelladurai
12)Ramachandran
13)M.Yesu
14)Margeret
15)P.S.Chandra Sekar Raja
16)S.Savarimuthu
17)S.Michel Antony
18)M.Mariammal
19)K.Saraswathi
20)Chellakani
21)Sahul Hameed
22)P.C.Vijaya Lakshmi
23)Samuel
24)M.Mariadas
25)V.Antony Samy
26)Arulappan
27)R.Siva Rama Krishnan
28)Chelladurai
29)A.Yagappan
30)A.Albonce
31)S.John Michel



- 33) P. Michel
- 34) Akbar Ali
- 35) M. Kulanthai Yesu
- 36) Mrs. Lurthu
- 37) Michel Antony
- 38) Michel Ammal
- 39) Basker
- 40) Madhammal
- 41) Thomas Vedha Nayagam
- 42) Vijaya Kumar
- 43) V. Antony Savari Muthu
- 44) S. Alangaram
- 45) S. Yesu Michel
- 46) M. Yesu
- 47) S. Xavier
- 48) Yagappan
- 49) Amal Raj
- 50) Aarogiyam
- 51) Arulappan
- 52) Savariammal
- 53) Maria Aarogiyam
- 54) A. Mariammal
- 55) M. K. M. Mohamadu Abubacker
- 56) Panimathu
- 57) Antony Muthu
- 58) Amal Raj
- 59) A. Yesu Antony
- 60) Savariyammal
- 61) Savarimuthu
- 62) Aarogia Mery
- 63) Antony Savari Muthu
- 64) Antony Ammal
- 65) Yesu Antony Ammal
- 66) Xavier
- 67) Maria Gana Prakasam
- 68) Antony Aarogiya Samy
- 69) Kitheriyan
- 70) Maria Arulayee
- 71) Antony
- 72) Rathinam
- 73) S. Antony Muthu
- 74) V. Xavier
- 75) S. Antony
- 76) Vedha Muthu
- 77) S. Yesu Michel
- 78) M. K. M. Syed Mohamed Buhari
- 79) Yagu Antony
- 80) Laaser
- 81) Amal Raj
- Antony Samy (died)



83)Xavier
84)Antony Ammal
85)Aarogia Mery
86)Antony Raj
87)Jesu Ammal
88)Maria Antony
89)Kanni Mariammal
90)Mariamichelal
91)Siluvai Antony
92)Soosai Antony
93)Joseph Sundar Raj

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2019 in A.S.No.22 of 2019 dated 04.04.2019 on the file of the Additional Sub Court, Tirunelveli.

For Petitioners : Mr.H.Arumugam

For RR15, 21, 22, 23 and 27 : Mr.F.X.Eugene

RR34, 35, 78 to 82 and 84 to 86 : No appearance

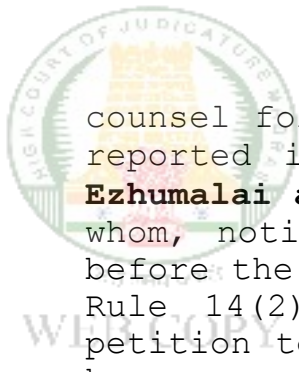
ORDER

Against the dismissal of the petition filed under Order 41 Rule 3 and Section 151 of the Civil Procedure Code, to dispense with notice to the respondents 1 to 14, 16 to 20, 26, 28 to 33, 35 to 54, 56 to 77 and 87 to 96 in the appeal suit, this revision petition is filed by the revision petitioners/appellants/plaintiffs.

2.The revision petitioners as plaintiffs filed a suit in O.S.No.462/2007 on the file of the I Additional District Munsif Court, Tirunelveli, against the respondents herein/defendants, for declaration and permanent injunction in respect of the suit properties. The respondents 15, 21 to 23, 27, 34, 55, 78, 79 to 84 and 86 alone appeared before the trial Court through counsels and filed written statement and contested the suit and rest of the defendants were called absent and set exparte before the trial Court. Pending suit, respondents 10, 82, 85 and 86 died and the suit got abated as against them. After trial, the trial Court dismissed the suit on 04.08.2018, against which, the revision petitioners/plaintiffs filed appeal in A.S.No.22/2019 before the Additional Sub Court, Tirunelveli and in the appeal, they have filed I.A.No.1/2019 under Order 41, Rule 14(3) read with Section 151 CPC to dispense with notice to the above said respondents and the appellate Court dismissed the said I.A., against which, this revision petition is filed.

3.Today, when the matter is taken up for hearing, the learned

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counsel for the petitioners has produced the decision of this Court reported in 2019 (3) TLNJ 79 (Civil), **Tamilarasi and others vs, Ezhumalai and others**, and would state the above said respondents for whom, notice is sought to be dispensed with, had remained exparte before the trial Court and therefore, as per the proviso to Order 41 Rule 14(2) CPC, the appellate Court ought to have allowed the petition to dispense with notice to the above said respondents, but has erroneously dismissed the same. Thus, he would pray for setting aside the impugned order.

4. Heard the learned counsel for petitioners as well as the respondents 15, 21, 22, 23 and 27.

5. Perusal of record shows that the learned Judge has dismissed the above petition to dispense with notice to the above said respondents stating that the suit schedule items contains more number of properties and further, dispensing with the notice as per the proviso to Order 41 Rule 14 CPC is the discretion of the appellate Court and in the present case, considering the nature of the suit and number of properties involved, notices have to be sent to those respondents.

6. Proviso to Order 41 Rule 14 CPC reads as follows:-

"Provided that the Appellate Court may dispense with service of notice on respondents, against whom the suit has proceeded exparte in the Court from whose decree the appeal is preferred."

7. In the decision relied on by the learned counsel for the petitioner reported in 2019 (3) TLNJ 79 (Civil), this Court finding that the parties therein have remained exparte before the trial Court, held that applying the provisions in the proviso of Order 41 Rule 14(2) of the Code of Civil Procedure, the learned Judge ought to have dispensed with the service of notice to the said parties and while setting aside the order impugned therein, this Court has dispensed with the service of notice to the respondents therein.

8. In my opinion, the above said decision is squarely applicable to the present case on hand. Here also, the learned Judge relying upon the proviso of Order 41 Rule 14(2) of the Code of Civil Procedure, ought to have dispensed with the service of notice to the respondents 1 to 14, 16 to 20, 26, 28 to 33, 35 to 54, 56 to 77 and 87 to 96 as they remained exparte before the trial Court.

9. Therefore, the impugned order dated 04.04.2019 made in I.A.No.1 of 2019 in A.S.No.22 of 2019 on the file of the Additional Sub Court, Tirunelveli, is set aside and service of notice to the respondents 1 to 14, 16 to 20, 26, 28 to 33, 35 to 54, 56 to 77 and 87 to 96 is dispensed with.



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

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

BALA

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Additional Sub Judge,
Tirunelveli.

Copy to:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-7632[F] dated 26/02/2021)

ORDER MADE IN
CRP(MD)No.1063 of 2019
DATED : 25.02.2021

PK(CO)

SRS (04/03/2021) 5P : 4C