



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2021

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP (PD) (MD) No.1665 of 2014

and

MP (MD) No.1 of 2014

1.M.Murugan

2.M.Thangam

..Revision petitioners/

Petitioners/defendants 1&2

vs

M.Nirmala Devi

.. Respondent/Respondent/plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India against the dismissal order dated 10.04.2013 passed in I.A.No.59 of 2012 in O.S.No.641 of 2010 on the file of the I Additional Subordinate Judge, Thiruchirapalli and to allow the I.A.No. 59 of 2012 I.O.S.No. 641 of 2010 on the file of the First Additional Subordinate Judge, Tiruchirapalli.

For Petitioners

: Mr.K.S.Sankhar Murali

For Respondent

: Mr.M.Mohamed Sherbudeen,
legal aid counsel

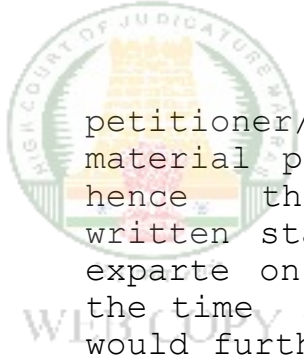
O R D E R

This revision has been filed against the dismissal order dated 10.04.2013 passed in I.A.No.59 of 2012 in O.S.No.641 of 2010 on the file of the I Additional Subordinate Judge, Thiruchirapalli.

2. The brief facts of the case:

The petitioners are the defendants 1 and 2 in O.S.No.641 of 2010 on the file of the I Additional Sub Judge, Trichy . The respondent/plaintiff had filed a suit to declare the registered sale deed 55 of 05 dated 12.01.2005 as null and void and also for a consequential relief of permanent injunction. The suit was posted on 21.12.2011 for filing of written statement on behalf of the defendants. The Trial Court finding that the defendants had not filed written statement had set them exparte. The defendants filed IA No.59 of 2012 seeking to set aside the exparte order dated 21.12.2011. The Trial Court finding that the despite 15 hearing dates the defendants had failed to file written statement had dismissed the IA as not maintainable. Against the dismissal of the IA No.59 of 2012 revision has been filed by the petitioners/defendants 1 and 2.

<https://hcservices.courts.gov.in/hcservices> 3. Mr.K.S.Shankar Murali, the learned counsel for the revision



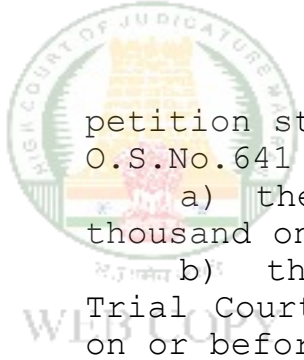
petitioner/defendants 1 and 2 would submit that since certain material particulars were unavailable and could not be secured, hence the petitioners/defendants 1 and 2 were unable to file written statement in time, whereas the Court below had set them exparte on 21.12.2011 for not filing the written statement within the time limit, despite several chances given. The learned counsel would further submit that the fact remains that the suit was in the initial stage and summons were yet to be served on some other defendants and it is not a case that the petitioners/defendants were reason for non progress and delay of the suit. The Trial Court without taking into consideration the stage of the suit had erred in dismissing the petition. The learned counsel would further submit that the petitioners have got good case on merits and substantial rights of the petitioners are also involved in this case. Failure to file written submission on 21.12.2011 was neither wilful nor wanton and that the petitioners were unable to file written statement and the petition under Order 7 Rule 11 to reject the plaint only because of non availability of certain important materials. He would further submit that some other defendants are also contesting the case and the suit is also still pending and the suit has not been disposed of, hence he would pray that the and the revision may be allowed on costs and terms. He would reiterate that the petition to set aside the exparte order was also filed within time. The learned counsel would further submit that the petitioners undertake to file written statement before the Trial Court on or before next hearing date.

4. Mr. Mohamed Sharbudeen, the legal aid counsel appearing for the respondent/plaintiff would submit that despite granting 15 opportunities, the petitioners failed to file written statement and the Trial Court following the mandate under the Code of Civil Procedure has set them exparte and also dismissed the petition seeking to set aside the exparte order. He would also submit that there is no infirmity in the order passed by the Court below.

5. Heard learned counsel on either side and perused the materials placed on record.

6. The revision petitioners are the defendants 1 and 2 in O.S.No.641 of 2010. The Trial Court finding that that the written statement was not filed despite 15 hearings had set the petitioners exparte. It is the case of the revision petitioners that they are purchasers of the suit scheduled property under a sale deed which is said to be declared a null and void and that they have got substantial interest in the suit and that if the exparte order is not set aside they will be deprived on their right to contest the suit.

7. This Court is of the opinion that the revision may be allowed on imposition of costs and terms. Accordingly the revision



petition stands allowed and the order passed in I.A.No.59 of 2012 in O.S.No.641 of 2010 is set aside on the following terms:

- a) the petitioner shall pay a sum of Rs.5000/- (Rupees Five thousand only) to the respondent/plaintiff on or before 18.11.2021
b) the petitioner shall file the written statement before the Trial Court along with the proof for payment of costs of Rs.5000/- on or before 18.11.2021 (next hearing date)

8. The Trial Court shall dispose of the suit as expeditiously as possible preferably within a period of nine months from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The I Additional Subordinate Judge,
Tiruchirappalli.

CRP (PD) (MD) No.1665 of 2014
08.10.2021

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