



C.R.P.No.1606 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.1606 of 2022
and C.M.P.No.8061 of 2022

R.Barathalvar Naidu (Died),
S/o Rajagopal Naidu

Kanniammal,
D/o R.Barathalvar Naidu

.. Petitioner

Vs.

C.Jeevarathinam (Died)
S/o Chokkalingam

1. N.Santhoshkumar
2. M.Sam Meesha
3. Lilly
4. Baskar
5. Paulina
6. Milkal
7. Saral
8. Rosilin

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to set aside the rejection order passed in I.A.No.12 of 2022 in I.A.No.2 of 2020 in O.S.No.70 of 2015 on the file of Additional District Munsif, Thiruvallur and allow the Civil Revision Petition.



C.R.P.No.1606 of 2022

For Petitioner : Mr.R.Balasubramanian

For Respondents : No appearance

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing I.A.No.12 of 2022, which was filed to restore I.A.No.2 of 2022, a Review Application, for default. Though notice served on the respondents and their names appear in the cause list, there is no representation for respondents.

2. The respondents herein filed the suit for declaration and injunction against the father of the petitioner in O.S.No.70 of 2015. The father of the petitioner filed a petition in I.A.No.1 of 2019 to recall DW2. The said petition was dismissed. Thereafter, the father of the petitioner filed I.A.No.2 of 2020 to review the order passed in I.A.No.1 of 2019. When the I.A.No.2 of 2020 was pending, father of the petitioner namely R.Barathalvar Naidu passed away. Therefore, the petitioner herein was brought on records as his legal representative and the matter was posted for supply of amended copies of I.A.No.2 of 2020. Owing to failure of the petitioner to file the amended copies,



C.R.P.No.1606 of 2022

I.A.No.2 of 2020 was dismissed for default on 24.11.2021. Therefore, the petitioner herein filed the application in I.A.No.12 of 2022 to restore the I.A.No.2 of 2020 which was dismissed for default and the same was rejected by the Court below. Aggrieved by the said rejection order, the present revision petition has been filed before this court.

3. In the affidavit filed in support of the restoration application the petitioner averred that due to Covid-19 restrictions and also heavy flood surrounding his house, he was not able to contact his counsel and take steps to file the amended copies of I.A.No.2 of 2020. The said application was dismissed by the Court below by stating that the application was filed under Order IX Rule 7 CPC instead of under Order IX Rule 9 CPC. The reason given by the Court below cannot be accepted, as it is settled law that giving wrong provision of law is not a ground to dismiss the petition. It is always open to the Court to treat the petition in I.A.No.12 of 2022 as the one filed under Order IX Rule 9 CPC and dispose of it in accordance with law. The other reasons given by the Court below regarding the allegations made against the Presiding Officer are not germane to the issues involved in this application. Those allegations were made in the review application namely I.A.No.2 of 2020, the Court below can consider the same, while considering the I.A.No.2 of 2020 on merits.



C.R.P.No.1606 of 2022

WEB COPY

4. Having satisfied with the reasons given by the revision petitioner for the failure to appear before the Court below and to supply the amended copies of I.A.No.2 of 2020, this Court is inclined to allow the Civil Revision Petition by setting aside the fair and decreetal order passed in I.A.No.12 of 2022 dated 15.02.2022. Four (4) weeks time is granted to the revision petitioner to file amended copies of I.A.No.2 of 2020 from the date of receipt of a copy of this order. On compliance of the above direction, the Court below is directed to restore the I.A.No.2 of 2020 to the file and dispose of the same in accordance with law.

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

26.10.2022

nti

Index: Yes/ No

Internet : Yes / No

To

The Additional District Munsif, Thiruvallur.



WEB COPY



C.R.P.No.1606 of 2022

S.SOUNTHAR, J.

nti

C.R.P.No.1606 of 2022

26.10.2022