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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM:

THE HONOURABLE **MRS.JUSTICE R. HEMALATHA**

C.R.P.No.652 of 2020
and
C.M.P.No.3362 of 2020

V.Kannan ... Petitioner

..Vs..

1.G.Saraswathi
2.P.Bharathi
3.S.Shanthakumari
4.A.S.Rajendran
5.S.Dhanalakshmi
6.A.S.Muruganandam
7.Indrani
8.A.S.Sundararaj
9.S.Manimala
10.Indrani
11.K.Suganthi
12.K.Seenu
13.S.Atchaya Keerthana
14.M.Uma Maheswari
15.Smt.Kamalapathi
16.Karpagam
17.K.S.Raghavan
18.Minor. Suresh
19.R.Vijayalakshmi
20.R.Swathi
21.R.Brindha
22.R.Suba Rajendran

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23.R.Jayachandran
24.R.Anandha Ram
25.R.Aravinth Lakshmanan ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 19.09.2019 in I.A.No.3 of 2019 in O.S.No.239 of 2011 on the file of the Sub Court, Pollachi.

For Petitioner : Mr.S.Kowshik for
Mr.V.Anandhamoorthy

For Respondents : Dr.P.Vasudevan

ORDER

The present Civil Revision Petition is filed to set aside the fair and decretal orders dated 19.09.2019 in I.A.No.3 of 2019 in O.S.No.239 of 2011 on the file of the learned Subordinate Judge, Pollachi.

2.The revision petitioner is the first defendant in O.S.No.239 of 2011 on the file of the learned Subordinate Judge, Pollachi. The respondents/plaintiffs filed the suit for a declaration and for recovery of of possession of the suit property from the defendants.

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3.The first defendant remained absent and was set *ex parte* on 30.07.2012. Thereafter, he filed an application in I.A.No.3 of 2019 under Order IX Rule 7 of CPC to set aside the *ex parte* orders passed against him.

4.The respondents/plaintiffs filed a counter and after full contest, the learned Subordinate Judge, Pollachi, dismissed the application in I.A.No.3 of 2019 vide his orders dated 19.09.2019 on the ground that since the petition is hit by Article 137 of the Limitation Act, the petition cannot be sustained. Aggrieved over the same, the present Civil Revision Petition is filed.

5.Heard Mr.S.Kowshik, learned counsel appearing for the revision petitioner and Dr.P.Vasudevan, learned counsel appearing for the respondents.

6.Dr.P.Vasudevan, learned counsel appearing for the respondents contended that the trial court dismissed the application

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mainly on the ground that the petition filed by the first defendant after a lapse of 2000 days is hit by Article 137 of Limitation Act. According to him, the petition to set aside an *ex parte* order ought to have been filed within three years from the date of the order as per Article 137 of Limitation Act and therefore, the petition is liable to be dismissed.

7. In the decision in *"Rajasekar Vs. Govindammal and Ors."* reported in *"2020 (4) LW 481"* a learned Single Judge of this Court, after adverting to the various judgments on the subject and after following the decision of the Hon'ble Supreme Court in *"Sangram Singh Vs. Election Tribunal, Kotah and Others"* reported in *"AIR 1955 SC 425"* observed that there is no limitation for filing the application under Order IX Rule 7 of the Code of Civil Procedure. It was also held that the essence of an application under Order IX Rule 7 of the Code of Civil Procedure is not one for setting side an act of the Court, but one seeking permission of the Court to reopen the proceedings and enable the defendants to participate in the trial proceedings. In the circumstances, the revision petition is liable to be allowed.

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8.In the result

a) The Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

b) The order passed by the learned Subordinate Judge, Pollachi, dated 19.09.2019 in I.A.No.3 of 2019 in O.S.No.239 of 2011 is set aside and the trial Court is directed to take the written statement filed by the first defendant on file and proceed the matter on merits and try to dispose of the case as early as possible.

23.09.2022

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Index : Yes/No
Speaking / Non-speaking order

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R. HEMALATHA, J.
mtl

To

1.The Sub Court, Pollachi.
2.The Section Officer, VR Section, High Court, Madras.

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