



WEB COPY

C.R.P. (PD) No.2087 of 2022
and C.M.P. No.10733 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P. (PD) No.2087 of 2022
and C.M.P. No.10733 of 2022

Manimekalai	...	Petitioner / 4 th defendant
	<i>versus</i>	
1.P.Periyasamy	...	Respondent / Plaintiff
Nallammal (died)		
2.Mani @ Eswari		
3.Saradha @ Raasu	...	Respondents / defendants 1 to 3
4.Palanisamy		
5.Saravanan		
6.Vinoth Kumar		
7.Venkatachalam		
8.Palanisamy	...	Respondents / defendants 5 to 9

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.04.2022 made in I.A.No.1 of 2022 in O.S.No.182 of 2008 on the file of the Sub Court, Rasipuram and allow the petitioner to contest the partition suit.

For Petitioner : Mr.M.Velmurugan
For Respondent No.1 / : Mr.T.Sezhian
Caveator



ORDER

This Civil Revision Petition has been preferred challenging the order of the learned Subordinate Judge, Rasipuram, dated 21.04.2022 made in I.A.No.1 of 2022 in O.S.No.182 of 2008.

2. The revision petitioner is the 4th defendant. The first respondent / plaintiff has filed the suit for partition and separate possession against the defendants. Since the 4th defendant did not file her written statement, she was set *ex parte*. Thereafter, the 4th defendant filed a petition to set aside the *ex parte* order and the same was dismissed. Aggrieved over that, this Civil Revision Petition is preferred.

3. The learned counsel for the petitioner submitted that as the petitioner was suffering from various ailments, she could not make her appearance in Court and file her written statement in time; since the suit is still pending and she has also filed her written statement along with a petition, an opportunity should be given to her to participate in the trial.



WEB COPY

4. The learned counsel for the first respondent submitted that on earlier two occasions also, the very same revision petitioner filed petitions to set aside the *ex parte* order and the same were allowed; despite sufficient opportunities were given to the petitioner she did not make use of the opportunity and has come up with the present petition just to cause hardship to the plaintiff and also to delay the proceedings.

5. The records would show that the suit was pending for nearly 16 years. Due to the non appearance of the petitioner, she was set *ex parte* twice and thereafter, she filed petitions to set aside the *ex parte* order and that were allowed. Even thereafter she was not vigilant enough to file her written statement and again she was set *ex parte* on 22.02.2010. Now taking advantage of the long pendency of the suit, she has come forward with another petition challenging the *ex parte* order.

6. Though the revision petitioner has not stated in her petition any valid reasons, considering the pendency of the suit and the fact that atleast now she has attached her written statement with the petition,



I feel in the interest of justice an opportunity should be given to her.

However, the hardship and delay suffered by the first respondent/plaintiff cannot be overlooked and for which the revision petitioner is liable to pay costs.

7. In the result, this Civil Revision Petition is allowed. The order dated 21.04.2022 passed by the learned Subordinate Judge, Rasipuram, in I.A.No.1 of 2022 in O.S.No.182 of 2008 is set aside and the petition in I.A.No.1 of 2022 is allowed on payment of costs of Rs.5,000/- [Rupees Five Thousand only] to the first respondent/plaintiff within a period of one week from the date of receipt of a copy of this order, failing which the petition will stand automatically dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

12.07.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

Note : Issue Order Copy on 13.07.2022

sri



To
WEB COPY

The Sub Court, Rasipuram.

C.R.P. (PD) No.2087 of 2017
and C.M.P. No.10733 of 2017





WEB COPY

C.R.P. (PD) No.2087 of 2022
and C.M.P. No.10733 of 2022



R.N.MANJULA, J.

sri

C.R.P. (PD) No.2087 of 2022
and C.M.P. No.10733 of 2022

12.07.2022