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C.R.P. (NPD) No.2254 of 2021
and CMP No.17138 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (NPD) No.2254 of 2021
and CMP No.17138 of 2021

1. Pastor G.Gnanadoss
State Overseer,
The Church of God (Full Gospel in India)
No.1, "Deewan Rama Road",
Purasawalkam, Chennai 600 084.

2. Pastor David Diraviaraj
The Church of God (Full Gospel in India)
Near Petrol Bunk,
K.K.R. Majestic Colony,
Madhavaram High Road, Chennai.

.. Petitioners

Vs.

1. Selvaraj
Love Foundation,
"Home for Orphans and Aged Persons"
No.6, Anbazhagan Nagar,
Minjur, Tiruvallur District.

2. D.Gentely Rathinaraj
Respondents

..



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order of rejection of I.A.No.3 of 2021 in OS. No.124 of 2014, dated 08.04.2021, passed by the learned District Munsif, at Ponneri.

For Petitioners : Mr. E.Prabu

For Respondents : Mr.Rajkumar Paul, for R1

ORDER

Challenge in this Revision is to the rejection of an application filed by the petitioners under Order IX Rule 13 of the Code of Civil Procedure seeking to set aside the judgment and decree passed in OS No.124 of 2014 on 01.02.2020 on the premise that the same is an *exparte* decree.

2. The suit was filed by the first respondent seeking a decree for permanent injunction restraining the defendants from interfering with his



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possession of the property. The petitioners who are the defendants in the suit appeared through counsel filed a written statement and contested the proceedings. However, they did not choose to let in evidence, despite opportunities having been granted.

3. The Trial Court proceeded to dispose of the suit under the explanation to Order XVII Rule 2 of the code of Civil Procedure. Terming the decree as *exparte*, the petitioners filed an application within 25 days from the date of the judgment seeking to set aside the same. Certain reasons were assigned by the petitioners for their absence on the fateful day i.e. on 01.02.2020. The Trial Court returned the application questioning the maintainability on the ground that the decree is one on merits. The same was represented enclosing a copy of the judgment of the Hon'ble Supreme Court in ***G.Ratna Raj v. Sri Muthukumarasamy Permanent Fund Limited and another***, reported in ***(2019) 11 SCC 301***. The Trial Court, however, rejected the application on the ground that the decree is one on merits. The Trial Court had heavily relied upon the explanation to Order XVII Rule 2 of the Code of Civil Procedure.



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4. Mr.E.Prabu, learned counsel appearing for the petitioners would vehemently contend that if no evidence had been let on the side of the defendants and the defendants fail to appear, the Court has no option but to proceed under Order XVII Rule 2 of the Code of Civil Procedure, that is in any one of the modes prescribed in Order IX of the Code of Civil Procedure. Order IX of the Code of Civil Procedure requires the Court to proceed *exparte* in the absence of any of the parties. The explanation appended to Rule 2 of Order XVII of the Code of Civil Procedure, is in the nature of an exception. It authorises a Court to proceed on merits or to proceed on a assumption that the party is present, only if evidence or substantial portion of such party is already on record. The words '***the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear***' was the subject matter of discussion in several cases, before this Court as well as the Hon'ble Supreme Court.

5. A Division Bench of this Court in ***N.A.Suyambulingam v. V.K.Swaminathan and others***, reported in ***1988 (1) LW 368***, had held that



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the Court is authorised to proceed under the explanation only if the evidence of the party who fails to appear is already on record. The same view was taken by the Hon'ble Supreme Court in **Prakash Chandar Manchanda Vs Janaki Manchanda** reported in *AIR 1987 SC 42* and in *B.Janakiramaiah Chetty v. A.K.Parthasarathi*, reported in *(2003) 5 SCC 641*. The very same legal position has been reiterated by the Hon'ble Supreme Court in *G.Ratna Raj v. Sri Muthukumarasamy Permanent Fund Limted and another*, reported in *(2019) 11 SCC 301*.

6. In the case on hand, it is admitted that the defendants had not let in any evidence leave alone substantial evidence. If the defendants had not let in any evidence, the Court had no option but to proceed under Order IX of the Code of Civil Procedure, even if the Court proceeds on merits it is deemed to be an *exparte* judgment which can be set aside in an application under Order IX Rue 13 of the Code of Civil Procedure. I am therefore of the opinion that the Trial Court was clearly wrong in rejecting the application on the ground that the judgment is one on merits. The conclusion of the Trial Court is opposed to the well settled principles of law laid down



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by this Court and the Hon'ble Supreme Court.

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7. In view of the above, this Civil Revision Petition is allowed. The order of the Trial Court is set aside and the matter is remitted to the Trial Court, the Trial Court is directed to dispose of the application in IA No.3 of 2021 on merits after affording opportunity to the parties.No costs. Consequently, the connected miscellaneous petition is closed.

24.01.2022

jv

Index: No

Internet: Yes

Speaking order

To

1. The District Munsif,
Ponneri.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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R.SUBRAMANIAN, J.

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