



C.R.P. No. 2633 of 2017

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T.V.THAMILSELVI, J.

This matter was taken up for hearing under the caption “For Being Mentioned” today at the instance of the learned counsel for the petitioner.

2. The learned counsel for petitioner would submit that this Court by an order dated 19.09.2022 allowed the above C.R.P. and also issued direction. However, in para-6 of the order, instead of mentioning “the findings rendered by the trial judge is set aside”, it was wrongly mentioned as “confirmed”. Hence, the matter is listed today.

3. Heard the contentions of learned counsel for petitioner and perused the order.

4. Considering his submissions, the paragraph-6 of the order is clarified as follows:

In Para 6 at Page 4

“6. In the result, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No. 1572 of 2011 is set aside. However, the suit is pending from the year of 2005, so, the trial judge is directed to dispose the case within a period of six months by giving opportunity to the contesting 2nd



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defendant from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.”

5. Registry is directed to incorporate above correction in the Order of this Court in C.R.P.No.2633 of 2017 dated 19.09.2022 and issue fresh order copy to the petitioner.

17.10.2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2022

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 2633 of 2017
and
C.M.P. No. 12575 of 2017

V.Selvadurai,
S/o. K.Veerappan

... Petitioner

Versus

1. Mrs.Rajendri,
W/o. Ganesan

2. Mrs.Radha Ammal,
W/o. Late Chinnasamay Gramani

3. Mr.Badrinath,
S/o. Kanniah Pillai

... Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 25.04.2017 passed in I.A.No. 1572 of 2011 in O.S.No.265 of 2005 on the file of the District Munsif, Maduranthakam.



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For Petitioner : Mr. M.Sivavarthanan

For Respondents : Mr.G.Magesh Kumar for R1

R2 – No such addressee

R3 – No appearance

ORDER

The Revision Petitioner herein is the 2nd defendant in the suit in O.S.No.265 of 2005 filed by the 1st respondent/plaintiff Rajendri for the relief of partition claiming herself as adopted daughter of one Chinnaswamy, from whom, the revision petitioner purchased the property for a valid consideration. But, the 1st defendant Radha ammal said to be wife of the said Chinnaswamy and 2nd defendant is the purchaser of the property denied her claim.

2. The 1st defendant filed her written statement and contested the suit and subsequently, the suit was decreed in favour of plaintiff by granting share of item Nos.1 and 2 of suit property. The 2nd defendant, who is the purchaser of item Nos.1 and 2 of property filed an application to set aside the exparte decree, however, there arose delay of 497 days. Hence, he filed an application to condone the delay of 497 days in



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I.A.No. 1572/2011 and that application was dismissed by the trial court stating that the reasons assigned for the delay were not satisfactory.

3. Challenging the said findings, the 2nd defendant preferred this Civil Revision Petition. The learned counsel for Revision Petitioner submitted that no notice was properly served on him and also pointed out that in the cause title of plaintiff, her father name was not mentioned. Furthermore, the 2nd defendant's name is Selvadurai not Chelladurai. Moreover, there is no prayer for declaration in the suit. So, in all aspects, his content is that no notice was served on him with proper address. Hence, he prayed to set aside the order passed by the trial court.

4. Heard and considered submissions of learned counsel for petitioner as well as 1st respondent and perused the records.

5. Considering the facts and circumstances of the case, the suit filed by the plaintiff, as such, she is the adopted daughter of one Chinnaswamy. On perusal of plaint attached with this revision petition, this court found that there is no prayer with regard to a declaration declaring that she is adopted daughter of one Chinnaswamy, but the trial



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court on considering the submissions of the 1st respondent/plaintiff alone decreed the suit, however, as the purchaser, the 2nd defendant is the owner of the part of the suit property in item Nos.1 and 2. Hence, he is entitled to defend his case by proving his right over the suit property. So, in a suit for partition, all the parties are necessary parties and their rights are to be adjudicated in a fair manner, but the respondents 2 and 3 raised objections. But, on seeing the facts, for the above stated reasons, the delay is ordered to be condoned and accordingly, the delay is condoned.

6. In the result, this Civil Revision Petition is allowed, and the findings rendered by the trial judge in I.A.No.1572 of 2011 is confirmed. However, the suit is pending from the year of 2005, so, the trial judge is directed to dispose the case within a period of six months by giving opportunity to the contesting 2nd defendant from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

19.09.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To
District Munsif, Maduranthagam.



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