



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.3 of 2017

C.Sangeetha

... Petitioner / Plaintiff

Vs.

1.N.Chinnaswamy

2.Thangamani

3.P.Prakash

4.Pappathy

5.S.Jeyanthi

6.S.Usha Nandhini

... Respondents / Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.11.2016 passed in CFR No.11392 of 2016 in unregistered O.S.No. /2016 on the file of the Principal Sub Court, Erode.

For Petitioner	..	Mr.I.C.Vasudevan
For Respondent	..	No appearance.

**ORDER**

WEB COPY A perusal of the records show that R1 to R6 have been served through Court notice on 30.09.2020. The names of R1 to R6 is also printed in the cause list.

2.The revision petitioner had earlier filed O.S.No.332 of 2013 before the I Additional District Munsif Court, Erode. The said suit was also filed for partition and separate possession. There was an amendment required and the same was permitted. Thereafter, in view of the amendment, additional Court fees had to be paid by the plaintiff. The I Additional District Munsif had stipulated a particular time within which such Court fees should be paid. The plaintiff/revision petitioner did not pay the Court fees. The suit was rejected under Order 7 Rule 11(b) and (c) CPC.

3.Thereafter, the plaintiff / revision petitioner had filed a fresh suit on the same cause of action. This particular suit had been rejected even without being taken on file by the Principal Sub Court Erode, necessitating filing of the present Civil Revision Petition.

4.The Principal Sub Judge, had unfortunately not considered Order



7 Rule 13 CPC.

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5. Order 7 Rule 13 CPC is as follows:

“13. Where rejection of plaint does not preclude presentation of fresh plaint.- The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.”

6. If a suit is rejected under Order 7 Rule 11, then the plaintiff therein has an option to question that particular order and urge either by way of appeal or revision to hold that such rejection was not proper and therefore, re-agitate the issues raised in the suit. There is yet another option, namely to file a fresh suit as provided under Order 7 Rule 13 CPC on the same cause of action.

7. The revision petitioner herein had taken the second option namely, to file a fresh suit under Order 7 Rule 13 CPC. Under that particular provision, the suit is maintainable.

8. The learned Principal Sub Judge, Erode had unfortunately not



even examined that particular provision and had straight away rejected the suit, without even taking it on file. The said order is *per se* against the provision of law and therefore, it has to be set aside and therefore the order in CFR No.11392 of 2016 in un-numbered Original Suit is set aside.

9. With the above observations, the Civil Revision Petition is allowed. The Principal Sub Court, Erode is directed to number O.S.SR.No.11392 of 2016, if it is otherwise in order and proceed further in manner known to law. No costs.

07.03.2022

Internet: Yes/No
Index: Yes/No
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To

The Principal Sub Court, Erode.



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C.V.KARTHIKEYAN,J.

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