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C.R.P.(NPD)3067 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(NPD).3067 of 2017

1.Kandasamy
2.S.Sundarambal
3.S.Ganesan
4.T.Rani

... Petitioners

vs.

1.Govindammal
2.Mani
3.Kannamal
4.Radhamani

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, seeking direction directing the Principal Subordinate Judge, Salem to entertain the unnumbered petition and affidavit in I.A. of 2015 in O.S.No.430 of 2010 filed by the petitioner and pass appropriate orders on the same within a stipulated time and allow the above C.R.P.

For Petitioners : Mr.R.Nalliyappan

For Respondents : Mr.D.Shivakumaran

ORDER

The first, fifth, sixth and seventh defendants in O.S.No.430 of 2010 are the revision petitioners herein.



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2. O.S.No.430 of 2010 had been filed by the first and second respondents herein as the first and third plaintiffs, seeking partition and separate possession of the suit mentioned properties. There was also a second plaintiff. There were also two other defendants who are shown as respondents in the present revision petition.

3. The first to fourth defendants had filed their written statement. They stated that there was an oral partition. An additional written statement was also filed by the first and second defendants. Thereafter, they did not participate any further during the course of trial. The revision petitioners were therefore set exparte. A Judgment was passed in the suit on 08.10.2015, whereby, while considering the written statement filed, issues were framed and on the basis of the available evidence, issues were answered and finally, the suit was decreed as prayed for, which implied that partition was granted by Court.

4. Claiming that the said Judgment was an ex-parte Judgment, an application under Order IX Rule 13 CPC was filed by the revision petitioners herein seeking to set aside the ex-parte decree. That application was not



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numbered, but rather returned by the learned Principal Sub Judge, Salem. It was re-presented and the papers were again returned. They were again re-presented, and finally on 28.06.2014, the learned Principal Sub Judge, stated that the suit had been disposed of on merits on 08.10.2015 and therefore an application under Order IX Rule 13 CPC was not maintainable and returned the same. This revision petition has been filed against that noting.

5. I would rather that the learned Principal Sub Judge, had not taken upon himself that particular aspect of deciding the maintainability of a particular application, but rather come to that conclusion on the basis of a counter affidavit filed by the respondent. That is a judicial decision to be taken after considering rival pleadings and rival arguments and thereafter, any application can be dismissed as not maintainable, if at all, on the face of it, it is not supported by any provision of law or is violative of any specific provision of law.

6. Here questioning the particular Judgment, dated 08.10.2015, there were two options available i.e., the petitioner can seek to set aside the said judgment by filing an application under Order IX Rule 13 CPC by taking it as



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an ex-parte Judgment in so far as the revision petitioners are concerned, or an appeal can also be filed against the same.

7. When there are two options available, rejecting the application even without taking it on file, and stating that it is not maintainable, in my opinion is not proper.

8. Therefore, the Civil Revision petition is allowed. A direction is given to the learned Principal Sub Judge, Salem to take on record the petition, if it is otherwise in order. The said un-numbered I.A shall be assigned a number. Permission may be granted for filing a counter. Thereafter, the same can be disposed on merits, by taking any view in accordance with law and in manner known to law. It would be appreciable if that exercise is completed on or before 31.07.2022. No costs.

30.03.2022

Index: Yes/No
Speaking Order: Yes/No
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To:

- 1.The Principal Subordinate Judge, Salem.
- 2.The Section Officer,
V.R.Section, High Court of Madras.



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C.V.KARTHIKEYAN, J.

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