



C.R.P. No.4321 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**C.R.P. No.4321 of 2018**  
**and C.M.P.No.23657 of 2018**

Tamil Nadu Industrial Investment Corporation  
Represented by its Branch Manager  
Tiruvallur Branch  
No.86, Second Main Road  
Ambattur Industrial Estate  
Chennai – 600 058.

. . . Petitioner/Petitioner/  
3<sup>rd</sup> Defendant

Vs.

1.Sujatha B.Pankaj  
D/o Krishnasamy  
Respondent/

. . . 1<sup>st</sup> Respondent/1<sup>st</sup>

Plaintiff

2.Vidya  
D/o Krishnasamy  
3.Annapoorna  
D/o Krishnasamy

. . . 2<sup>nd</sup> & 3<sup>rd</sup> Respondents  
/2<sup>nd</sup> & 3<sup>rd</sup> Respondents/1<sup>st</sup> & 2<sup>nd</sup>

Defendants

4.Subbaraj  
S/o Venkatesan

. . . 4<sup>th</sup> Respondent/



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4<sup>th</sup> Respondent/4<sup>th</sup>

Defendant

**PRAYER:** Civil Revision Petition has been filed under Section 115 of C.P.C., against the fair and decreetal order in I.A.No.214 of 2018 in O.S.No.6 of 2011 on the file of the II Additional District Court, Tiruvallur at Poonamallee dated 10.08.2018.

For Petitioner : Mr.Magesh .K

For Respondents : Mr.V.G.Suresh Kumar for R1

### **ORDER**

This Civil Revision Petition has been filed against the fair and decreetal order dated 10.08.2018 in I.A.No.214 of 2018 in O.S.No.6 of 2011 on the file of the II Additional District Court, Tiruvallur at Poonamallee.

2.The petitioner is the 3<sup>rd</sup> defendant in the suit filed by the 1<sup>st</sup> respondent/plaintiff, for partition. Due to non-appearance before the Court below, the petitioner/3<sup>rd</sup> defendant was set exparte on 17.09.2013. On the



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strength of the preliminary decree, the 1<sup>st</sup> respondent/plaintiff filed petition for final decree, in which the revision petitioner/3<sup>rd</sup> defendant was served notice. The 1<sup>st</sup> respondent also entered her appearance on 25.04.2014. Thereafter on 02.02.2018, the petitioner/3<sup>rd</sup> defendant filed petition to set aside the exparte decree, with delay and the same was dismissed on 10.08.2018. Aggrieved by the same, the present Civil Revision Petition has been filed.

3.The learned counsel for the revision petitioner/3<sup>rd</sup> defendant would submit that the suit was originally filed before the Principal District Court, Tiruvallur at Poonamallee and without notice to the 3<sup>rd</sup> defendant and the counsel, the Trial Court set the petitioner as exparte. He would further submit that the auction purchaser, who is the 4<sup>th</sup> respondent was also set as exparte before the Trial Court. As against the exparte decree, the 4<sup>th</sup> respondent filed petition to set aside the exparte decree with delay and the same was dismissed. Against which he preferred a Civil Revision Petition



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in C.R.P.No.3735 of 2017 before this Court and this Court by an order dated 26.03.2021 set aside the exparte decree and allowed the Civil Revision Petition. The operative portion of the said order reads as follows:-

*“11.Further, as stated supra, the petitioner has got a good case to defend the suit filed by the first respondent herein for partition as such the petitioner may be given one more opportunity to defend the suit, since the judgment and decree passed by the court below against the petitioner is not in consonance with Order 20 Rule 4 & 5 of CPC.*

*12.In view of the above discussion, the order passed by the court below is perverse, illegal and liable to be set aside. Accordingly, the civil revision petition is allowed and the fair and decretal order passed in IA.No.285 of 2015 in OS.No.6 of 2011 on the file of II Additional District Judge at Poonamallee dated 09.12.2016 is set aside on payment of cost of Rs.5,000/~ (Rupees Five Thousand only) payable to the first respondent within a period of two weeks from the date of receipt of copy of this order. On receipt of*



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*the acknowledgement, the court below is directed to restore the suit, proceed with the suit and dispose of the same on merits and in accordance with law within a period of six months thereafter. Consequently, connected miscellaneous petition is closed. No order as to costs.”*

4. Heard the learned counsel for the petitioner, the learned counsel for the 1<sup>st</sup> respondent and perused the materials available on record.

5. The revision petitioner is the 3<sup>rd</sup> defendant in the suit, filed by the 1<sup>st</sup> respondent for partition. The suit was initially filed before the Principal District Court, Tiruvallur. Thereafter, the suit was transferred to the file of the II Additional District Court, Poonamallee. There is no evidence to show that the Trial Court issued notice to the parties and whether displayed in the notice board about the transfer of the suit. Further from the case records, it is seen that the petitioner has also been not served and no opportunity has been given to him.



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6. It is the contention of the learned counsel for the revision petitioner that the 3<sup>rd</sup> defendant has got a good case to defend the suit and further more, he is in the same footing as that of the 4<sup>th</sup> respondent, whose prayer to set aside the exparte decree was allowed by this court and therefore, sought one more opportunity to the 3<sup>rd</sup> defendant to defend the suit.

7. Taking into consideration the submissions of the revision petitioner and in view of the order of this court passed in C.R.P.No.3735 of 2017 dated 26.03.2021, this court deems it fit to pass the following order:-

*(i) Since the judgment and decree passed by the court below is not in consonance with Order 20 Rule 4 & 5 of CPC, the order passed by the court below is perverse, illegal and liable to be set aside.*

*(ii) Accordingly, the civil revision petition is allowed.  
The fair and decretal order passed in IA.No.214 of*



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*2018 in OS.No.6 of 2011 on the file of II Additional District Judge at Poonamallee dated 10.08.2018 is set aside on payment of cost of Rs.5,000/~ (Rupees Five Thousand only) payable to the first respondent within a period of two weeks from the date of receipt of copy of this order. On receipt of the acknowledgement, the court below is directed to restore the suit, proceed with the suit and dispose of the same on merits and in accordance with law within a period of six months thereafter.*

No costs. Consequently connected miscellaneous petition is closed.

**30.06.2022**

Jer/nvsri

To

1.The II Additional District Court  
Tiruvallur at Poonamallee.

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2.The Section Officer  
V.R.Section, High Court of Madras.



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**J.NISHA BANU, J.**

Jer/nvsri

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**30.06.2022**