



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.04.2022**

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P (MD)No.2481 of 2017

and

C.M.P (MD)No.11718 of 2017

1.Mallika
2.Kavitha
3.Rosa @ Priya

... Petitioners/
Petitioners/Defendants 4 to 6

Vs.

1.Nagarajan
2.Natarajan
3.Chinnappa
4.Periyanayagi

... 1st Respondent/
1st Respondent/Plaintiff

to 3
5.Chinnamani
6.Yogeswari
7.Maheswari
8.Keerthika

... Respondents 2 to 4/
Respondents 2 to 4/ Defendants 1

... Respondents 5 to 8
Respondents 5 to 8/Defendants 7 to 10

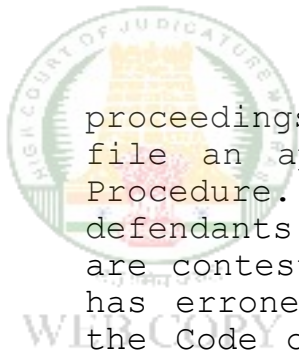
PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decretal order, dated, 13.09.2017, rendered in I.A.No.620 of 2017 in O.S.No.37 of 2010 on the file of the learned Sub-Judge, Pudukkottai.

For Petitioners : Mr.K.Mahalakshmi
For Respondents : Mr.G.Mathavan
for R1

ORDER

The defendants 4 to 6 are the revision petitioners.

2. The suit has been filed with a prayer for partition. While the suit was pending, the respondents 4 to 6 were set ex-parte on 31.01.2012. The defendants 4 to 6 filed an application on 13.06.2017 to set aside the ex-parte order. The learned trial Judge after hearing both the parties, has dismissed the application. It is settled possession of law that when the defendant is set ex-parte, he is always entitled to participate in the further stage of the



proceedings. Only when he wants to put the clock back, he has to file an application under Order 9 Rule 7 of the Code of Civil Procedure. There are 10 defendants in the suit, out of which, defendants 4 to 6 alone have been set ex-parte. The other defendants are contesting the suit. In the said circumstances, the trial Court has erroneously dismissed the application under Order 9 Rule 7 of the Code of Civil Procedure, on the erroneous appreciation of law that the application has been filed under Order 9 Rule 13 of the Code of Civil Procedure. The order of the trial Court is erroneous and the said order is set aside.

3. Accordingly, this Civil Revision Petition stands allowed. I.A.No.620 of 2017 is also stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

gbg

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Sub-Judge,
Pudukkottai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.K. MAHALAKSHMI, Advocate (SR-19952[F] dated 21/04/2022)

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RD(30.05.2022) 2P 5C