



WEB COPY

C.R.P.No.104 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.104 of 2023

and

C.M.P.No.794 of 2023

1.C.Lakshmanan
2.C.Selvaraj
3.C.Vasu
4.C.Sivasankar

... Petitioners

Vs.

1.J.Radhakrishnan
2.R.Kuppusamy
3.R.Chandrababu
4.R.Baskaran

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set-aside Docket order dated 13.12.2022 in I.A.No.2 of 2022 in O.S.No.141 of 2019 on the file of the IV Additional District & Sessions Court, Thiruvallur @ Ponneri.

For Petitioners

: Mr.A.Kalaiselvan



ORDER

The Civil Revision Petition has been filed to set-aside Docket order dated 13.12.2022 in I.A.No.2 of 2022 in O.S.No.141 of 2019 on the file of the IV Additional District & Sessions Court, Thiruvallur @ Ponneri.

2. The revision petitioners are the defendants in the suit and the respondents herein instituted a Suit for Declaration and Permanent injunction to declare that the Settlement Deed dated 27.09.2017 registered as Document No.6219 of 2017 is null and void. The suit was dismissed for default on 13.12.2022. The suit was dismissed for default on account of the non-appearance of the plaintiffs and thus, the plaintiffs filed I.A.No.2 of 2022 in O.S.No.141 of 2019 to set aside the *ex-parte* order and to restore the suit for adjudication. The trial Court considered the Interlocutory Application and allowed the Interlocutory Application on 13.12.2022 on condition to pay a cost of Rs.1,000/- to the respondents/defendants on or before 22.12.2022, failing which, the petition stands dismissed.



WEB COPY



3. The learned counsel for the revision petitioners state that the relief sought for in the Interlocutory Application filed in I.A.No.2 of 2022 is to restore the suit filed by the respondents in O.S.No.141 of 2019 and there is no specific relief sought for to set aside the *ex-parte* order passed. Therefore, the Interlocutory Application filed under Order 9 Rule 9 of C.P.C is not maintainable. It is further contended that, out of four plaintiffs, three plaintiffs were not interested in pursuing the suit and thus, the trial Court ought to have restricted the relief only in respect of one plaintiff alone. For all these reasons, the Civil Revision Petition is to be considered.

4. Perusal of the copy of the petition filed under Order 9 Rule 9 of C.P.C in I.A.No.2 of 2022 reveals that the petition was filed by all the four plaintiffs. Whether all the plaintiffs are interested in pursuing the matter or not is the issue to be considered and as far as the Interlocutory Application and the cause title in the Interlocutory Applications are concerned, it was filed by all the four plaintiffs to restore the suit.



WEB COPY

5. The relief sought for in the Interlocutory Application filed in I.A.No.2 of 22 is to restore the suit filed in O.S.No.141 of 2019. The contention of the revision petitioners that, the relief to set aside the *ex-parte* order is not sought for is a hypertechnical ground and merely on such hypertechnical grounds, no party shall be denied justice. The Interlocutory Application is filed for the purpose of setting aside the *ex-parte* order and to restore the suit for adjudication. This being the purport of the Interlocutory Application, non-quoting of the word would not defeat the petition. Thus, this Court is not inclined to consider such hypertechnical grounds for the purpose of non-adjudication of the issues raised in the suit.

6. All suits are to be adjudicated on merits and in accordance with law and by affording opportunity to the parties concerned. No doubt, in the present suit, the plaintiff failed to appear on the hearing date and the suit was dismissed for default. Within the time frame, they have filed the Interlocutory Application to restore the suit and the trial Court allowed the Interlocutory Application by imposing the cost of Rs.1,000/-. This being the order passed, this Court do not find any perversity in respect of the order



and the parties are bound to adjudicate the issues on merits by establishing their case.

WEB COPY

7. With these observations, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.01.2023

kak
Index : Yes
Speaking order
Neutral Citation : Yes

To

The Judge,
IV Additional District and Sessions Court,
Thiruvallur @ Ponneri.



WEB COPY

C.R.P.No.104 of 2



S.M.SUBRAMANIAM, J.

kak

C.R.P.No.104 of 2023

19.01.2023