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C.R.P.(NPD) No.4483 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

Civil Revision Petition (PD) No.4483 of 2013

R.N.Shanmugavadivel

... Petitioner

-Vs-

1.R.Soundararajan
R.C.Natarajan (Died)
R.N.Soundararajan (Died)

2.Nachammal

3.Sathyabama

4.Backiyalakshmi

5.Pangajavalli

6.R.C.N.Mylsamy
(R2 died - recorded. Petitioner and RR 3
to 7 LR's of the deceased. R2 viz., Nachammal
as per the memo dated 30.04.2019 and vide
court order dated 30.04.2019 made in CRP
No.4483 of 2013)

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution against the fair and decretal order dated 26.07.2013 in C.M.No.8 of 2013 on the file of the Principal District Judge's Court, Tiruppur reversing the fair and decretal orders dated 15.07.2009 in I.A.No.33 of 2006 in O.S.No.460 of 1994 on the file of the Subordinate Judge's Court, Udumalpet.



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For Petitioner : Mr.C.R.P.Prasanan
For Respondents : Mr. N.Thiagarajan - for R1
R2 - Died (memo filed)
RR 3,4,5,6 to 8, 9, 10 - Not ready in notice

ORDER

This revision arises against the dismissal of I.A.No.33 of 2006 which had been filed by the plaintiff to restore the suit, which has been dismissed for default.

2. The fundamental error committed by the Court below is that, having dismissed I.A.Nos.705 and 706 of 1997, it ought to have dismissed the suit only against those defendants alone. The power under Order IX Rule 9 can be exercised only when the suit is "called on for hearing". On the day ie., 28.08.2002, when the applications were listed for hearing, the suit was not called on for hearing and therefore, the suit ought not to have been dismissed. The Court below committed an error and dismissed the suit in its entirety. This mistake committed by the trial Court has been rectified by the lower appellate Court and the suit has been restored on to the file.

3. A party having approached the Court for remedy and having been litigating the same for over 30 years now, I do not want to throw out the suit on the ground of technicality. The lower appellate Court having exercised its jurisdiction, I do not



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find it necessary to interfere with the order and hence this civil revision petition is dismissed. The costs in this revision will follow in the suit.

16.08.2023

Index : Yes/No

NCS : Yes/No

2/2

KST

To

1.The Principal District Judge
Tiruppur.

2. The Subordinate Judge,
Udumalpet



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V. LAKSHMINARAYANAN, J.
KST

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