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CRP. No. 2442 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 2442 of 2023

Sivakami

...Petitioner

Vs.

1.Arunachalam (Died)

2.Dharmalingam

3.Tamilselvi

4.Senthilkumar

5.Rasambal

(R1 Died. R5 is brought on record as legal heir of the the deceased R1 viz. Arunachalam vide Court order dated 17.10.2023 made in CMP No. 19673 of 2023 in CRP No. 2442 of 2023.)

....Respondents

PRAYER : This petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.03.2023 made in application I.A No. 1299 of 2022 in OSCMACFR No. 10520 of 2022 on the file of the Principal District Court, Tiruppur.

For Petitioner : Mr.Krishna Kumar

For R1 : Died

For R2 : Not appeared

For R3 : Not claimed

For R4 : Not Known



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For R5 : AOS not filed.

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ORDER

This petition has been filed to set aside the fair and decreetal order dated 08.03.2023 made in application I.A No. 1299 of 2022 in OSCMACFR No. 10520 of 2022 on the file of the Principal District Court, Tiruppur.

2. The petitioner herein filed I.A No. 1299 of 2022 in OSCMACFR No. 10520 of 2022 on the file of the Principal District Court, Tiruppur to restore the suit on file which was dismissed for default and the Court below dismissed the said application stating that the suit was filed in the year 2011 and three times the petitioner allowed the case to be dismissed for default.

3. The learned counsel for the petitioner submits that the suit was originally instituted before the Sub Court, Tiruppur and transferred to Sub Court, Palladam and on 30.08.2022, the suit was dismissed for default and the counsel for the plaintiff counsel had not informed the plaintiff as to the dismissal of the suit and through his relative he came to know about the same and arranged a counsel at Tiruppur and obtained copies of the fair and final order. There was delay in applying for a certified copies which is neither wilful nor wanton but the Court below failed to appreciate the above facts. Hence, he prays to allow this petition.



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4. Considering the facts of the case, the suit was transferred from Sub Court, Tiruppur to Sub Court Palladam and the same was not informed to the petitioner by his Counsel. Thereafter, only the petitioner came to know about the dismissal of the suit for default though his relative. Further, the suit is filed for partition and also delay is 18 days, if the opportunity is not given to the petitioner his valuable right to defend the case will be defeated. Hence, the order passed by the Trial Court in I.A No. 1299 of 2022 in OSCMACFR No. 10520 of 2022 is set aside. Thus, I.A No. 1299 of 2022 is allowed. Further the petitioner is directed to pay a sum of Rs.5,000/- cost to the defendants within a period of two weeks from the date of receipt of a copy of this order.

5. In the result, this Civil Revision petition is disposed of.

20.12.2023

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To
The Principal District Court, Tiruppur.



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T.V.THAMILSELVI,J.

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