



C.R.P.No.3916 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

C.R.P.No.3916 of 2023

and

C.M.P.No.24128 of 2023

Seeman

.. Petitioner

Vs

Shanmugham (died)
Sundara Naicker (died)
Balarama Naicker (died)
Arumugha Naicker (died)
Thayarammal (died)

1.Kuppusamy
2.Ramu Naicker
3.Ranganathan
Ekambaram (died)
4.Neelakandan
5.Dhanakotti
6.Devaraj
7.Sathish
8.Seeman
9.Rukumani
10.Rathinam
11.Boopathi
12.Parthasarathy
13.Loganathan

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14. Adhikesavan
15. Elumalai
16. Saraswathi
17. Lakshmi
18. Anjalakshmi
19. Sashikumar
20. Santhi
21. Kalavathi
22. Umavathi
23. Ammakannammal
24. Kannappan
25. Murugan
26. Muthammal
27. Vijayakumar

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the District Munsif Court at Chengalpattu in I.A.No.2 of 2023 in I.A.No.462 of 2007 in O.S.No.285 of 1998 dated 02.09.2023.

For Petitioner : Mr. M. Jaikumar

ORDER

This Civil Revision Petition has been filed challenging the impugned order dated 02.09.2023 passed in I.A.No.2 of 2023 in I.A.462 of 2007 in O.S.No.285 of 1998 on the file of District Munsif Court, Chengalpattu, the second defendant has preferred the revision.



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2. Before the trial Court, the second defendant filed an application to set aside the ex parte order passed against him on 25.02.2022, praying to permit him to contest the final decree proceedings. The said application was objected by the contesting respondents stating that no valid reason was assigned.

3. The trial Judge, on considering both submissions stated that inspite of the summons, the petitioner was not appeared and commissioner also submitted his report about five months back. In order to obstruct the plaintiffs' claim, he filed application without proper reason and accordingly, it was dismissed.

4. Challenging the said finding, the petitioner has preferred this revision before this Court.

5. Learned counsel for the revision petitioner submitted that due to lack of communication, he was not able to appear before the Court. In



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the meanwhile, Commissioner was appointed but he is having a valid right to prove his case.

6. Considering the submissions, the suit for partition was filed in the year 1998 and preliminary decree was passed. To execute the same, the plaintiffs filed decree application and Commissioner was also appointed. But in the final decree proceedings, the petitioner was absent. Long back in the year 2007 the final decree application was filed, now the Advocate Commissioner was appointed. In spite of the notice, he remained ex parte but the learned counsel for the petitioner submits that due to unwell of his Advocate's son he was not able to appear. Admittedly, he is the second defendant, if opportunity is not given to the revision petitioner, his right over the property will be defeated and by setting aside the ex parte order would not cause any prejudice to the plaintiff. But the trial Judge without giving such opportunity, erroneously dismissed the application, which needs interference.



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7. Accordingly, the order passed by the trial Judge in I.A.No.2

of 2023 in I.A.No.462 of 2007 in O.S.No.285 of 1988 dated 02.09.2023 is set aside by giving one more opportunity to the revision petitioner to contest the final decree application and it is also directed to cooperate with the final decree proceedings and the trial judge is to conclude the trial in the final decree proceedings within two months from the date of receipt of copy of this order.

8. In the result, this Civil Revision Petition is disposed of.

Consequently, connected miscellaneous petition is closed. No costs.

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Index :Yes/No

Neutral Citation :Yes/No

AT

To

The District Munsif Court, Chengalpattu.



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T.V.THAMILSELVI, J.

AT

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