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CRP. No. 3311 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM:

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

CRP No. 3311 of 2023
& CMP No. 20467 of 2023

Omsakthi Narayani Sakthi Peedam Charitable Trust,
Malaikod, Ariyur Village,
Vellore Taluk and District,
Rep by Thiru. K.Soundarajan

...Petitioner

Vs.

Baggiyavathi (died)
1.G.Manimaran
2.Elangovan
3.G.Seeralan
4.Pugazhendi
5.Kaviarasi
6.Kalaiarasi
7.S.Sekaran
S.Chinnadorai (died)
8.S.Venkatesan
9.S.Sankar
10.S.Ravi
Shanmugam (Died)
S.Raja (died)
11.Ulagaveni
12.Pitcha muthu
13.Agilan



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14.Nagarajan
15.Lakshmi
16.Nandhini
17.Minor Chotta
18.R.KuPPu

....Respondents

PRAYER : This petition filed under Section 115 of CPC, to set aside the order dated 27.06.2022 passed by the learned Additional District Judge, Fast Track Court, Vellore in I.A No. 71 of 2019 in O.S No. 33 of 2005.

For Petitioners : Mr.N.Murali Kumara, Senior Counsel.
For R1 to R6 : Mr.M.Arumugam

ORDER

Challenging the impugned order dated 27.06.2022 passed by the learned Additional District Judge, Fast Track Court, Vellore in I.A No. 71 of 2019 in O.S No. 33 of 2005, the petitioners filed this Civil Revision Petition.

2. The petitioner herein filed I.A No. 71 of 2019 in O.S No. 33 of 2005 on the file of the Additional District Judge, Fast Track Court, Vellore, to condone the delay of 105 day filing the petition to set aside the exparte order dated 24.08.2016.

3. Originally suit in O.S No. 33 of 2005 was filed by the plaintiff for the relief of the partition against the defendants. Thereafter all the parties



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were remains exparte and the plaintiff was examined as P.W.1, based on that preliminary decree was passed. Subsequently, the revision petitioner herein/9th defendant came to know about the said preliminary decree immediately filed I.A No. 71 of 2019 in O.S No. 33 of 2005 to condone the delay of 105 day filing the petition to set aside the exparte order dated 24.08.2016, stating that whenever he visited his counsel, he used to say that he will take care of the case but thereafter the revision petitioner came know about the exparte decree. Hence, his absent was neither wilful nor wanton prayed to allow the petition.

4. The learned counsel for the respondent submits that the petitioner has no locus standi to file the above application since because the revision petitioner has not been recognized or permitted to represent the 9th defendant by the Court. Hence, he prays to dismiss the said application.

5. Considering the submissions on side the Court below dismissed the said application. Challenging the same the petitioner filed this petition.

6. Heard the learned senior counsel appearing for the petitioner and the learned counsel appearing for the respondent.

7. On seeing the facts of the case, the petitioner filed power of



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attorney to represent the 9th respondent but the Court below failed to appreciate the same, to that effect the petitioner relied the affidavit. On perusal of the affidavit, it reveals that the petitioner was appointed as power agent by the 9th defendant through document dated 11.05.2001, but the Court below failed to appreciate the same erroneously dismissed the said application. Furthermore, as per submission of the petitioner, when he approach his counsel, he stated he take care of the case, later the petitioner came to know about the exparte order, hence the petitioner should not be suffered due to the mistake committed by his counsel. If the opportunity is not given to the petitioner his valuable right to defend the case will be defeated. Therefore, the order dated 27.06.2022 passed by the learned Additional District Judge, Fast Track Court, Vellore in I.A No. 71 of 2019 in O.S No. 33 of 2005, is set aside. Accordingly, I.A No. 71 of 2019 is allowed with the condition to pay a sum of Rs.25,000/- as cost to the respondents counsel within a period of four weeks. Further, the Trial Court is directed to dispose of the suit as early as possible.

8. In result, this Civil Revision Petition is allowed. Consequentially,



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connected miscellaneous petition is closed.

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To

1. The Additional District Judge, Fast Track Court, Vellore.

T.V.THAMILSELVI,J.

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