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C.R.P. No. 409 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2023

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 409 of 2023
and
C.M.P. No. 3452 of 2023

1. N.Chandra
2. N.Ghanaprakasam
3. N.Anburaja

... Petitioners

Vs

Kannan

... Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to direct the Hon'ble Principal Subordinate Judge at Ulundurpet, Kallakurichi District to take on file and dispose on merit in I.A.SR.No.5367 of 2022 in O.S.No.454 of 2018.

For Petitioners : Ms.R.Pushpalatha

ORDER

This Civil Revision Petition has been filed seeking a direction directing the learned Principal Subordinate Judge, Ulundurpet, Namakkal to take on file and dispose the Interlocutory Application in I.A.SR. No. 5367 of 2022,



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which was filed by the Revision Petitioners, who are defendants in the suit in O.S.No. 454 of 2018 and the said suit was filed by the plaintiff seeking for partition.

2. The defendants contested the suit, but not filed written statement, however, they have filed an application to reject the plaint, which was dismissed by the trial court. Challenging the same, a Civil Revision Petition in C.R.P.No. 1902 of 2022 has been filed, but no stay was granted against the order passed by the trial court. Thereafter, the defendants not filed any written statement and they were set exparte. Subsequently, they have filed an application to set aside the exparte decree order in I.A.SR.No.5367 of 2022 without filing the written statement. Hence, the trial judge returned the application to set aside the exparte order on 01.08.2022 and the same was rejected by the trial court holding that without filing written statement, the application cannot be taken on file. Challenging the said findings, now the Revision Petitioners have preferred the present Civil Revision Petition.

3. On perusal of records, it reveals that in the year of 2018, the suit



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was filed by the plaintiff seeking for the relief of partition, but all these five years, the defendants have not filed their written statement. However, a Civil Revision Petition in C.R.P. No.1902 of 2022 has been filed and the same is pending, in which, there is no stay order passed by this court. Therefore, the order passed by the trial judge is justifiable one, which needs no interference. Accordingly, this Civil Revision Petition is dismissed. However, the Revision Petitioners are permitted to file a fresh application under Order 9 Rule 7 of C.P.C. to set aside the exparte order along with a written statement within a period of four weeks from the date of receipt of copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

06.03.2023

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To
Principal Sub-Judge,
Ulundurpet, Kallakurichi Dt.



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T.V.THAMILSELVI, J.

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