



C.R.P.No.4918 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

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

C.R.P.No.4918 of 2023

and

C.M.P.No.28961 of 2023

K.Subramanian

... Petitioner

-Vs-

1. Rajammal

2. Sambur Ammal

3. Palaniammal

4. Kuppayee

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decreetal order dated 21.08.2023 made in I.A.No.2 of 2023 in O.S.No.43 of 2010 on the file of the Subordinate Judge (Subordinate Court), Mettur and allow this C.R.P.

For Petitioner

: Mr.AR. Karthik Lakhmanan for
Mr.L.Palani Muthu

ORDER



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Challenging the impugned order passed in I.A.No.2 of 2023 in O.S.No.43 of 2010 passed by the learned Subordinate Judge, (Subordinate Court), Mettur, the Revision Petitioner/6th defendant preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioner/6th defendant filed an application under Order 9 Rule 7 of C.P.C. to set aside the exparte order passed against him on 21.07.2022. Thereafter, the other defendants contested the suit and the suit is ripened for trial. Having come to know about the said order, he filed the said application. On hearing both sides, the trial judge dismissed the application holding that no proper reason was assigned. Aggrieved over the same, the Revision Petitioner preferred this Civil Revision Petition.



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4. The learned counsel for revision petitioner would submit that as on date, the suit was not decreed and only at the part heard stage. He has also filed written statement along with the said application. But, without considering his submissions, the trial judge erroneously dismissed the application. Hence, he prayed to set aside the findings of trial judge.

5. Records perused. On perusal of entire facts, it reveals that the suit was filed seeking for the relief of partition and the revision petitioner/6th defendant denied the plaintiff's claim. So, in order to give one more opportunity to prove his case, this court is inclined to set aside the exparte order passed against him. If opportunity is not given, it will lead to multiplicity of proceedings, since because in the partition suit, every party is deemed to be plaintiff. But, the trial judge failed to give opportunity to this defendant, as such is erroneous one and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No.2 of 2023 in O.S.No.43 of 2010 is set aside and the said application is ordered to be allowed. Liberty is granted to the respondents/plaintiffs to file their reply statement, if any and on filing of reply statement by the plaintiffs, the trial judge is directed to



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proceed with the suit as per manner known to law. The revision petitioner is directed to cooperate with the proceedings. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

22.12.2023

Index : Yes/No
Speaking Order : Yes/No
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To

The Subordinate Judge (Subordinate Court),
Mettur.

T.V.THAMILSELVI, J.



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