



C.R.P(MD)No.342 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.342 of 2023

and

C.M.P(MD)No.1666 of 2023

Ambika

... Petitioner/1st Petitioner/
1st Defendant

Vs.

1.Yuvarani

... Respondent/Respondent/
Plaintiff

2.Abirami

... Respondent/2nd Petitioner/
2nd Defendant

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to direct the Principal District Judge, Karur to number and dispose the petition in I.A.SR.No.3357 of 2021 in O.S.No. 116 of 2018 and allow the present Civil Revision Petition.

For Petitioner : Mr.V.Balaji



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ORDER

The present revision petition has been filed by the 1st defendant in a suit for partition. The defendants 1 and 2 were set *ex parte* on 03.12.2019 and an *ex parte* decree for partition was passed on 10.12.2020.

2. The defendants 1 and 2 have filed an I.A.SR.No.3357 of 2021 to set aside the *ex parte* decree as against them. The said application has been returned on many occasions by the trial Court on the ground of maintainability. The trial Court is of the view that the 3rd defendant had contested the suit and the decree has been passed on merits as against the 3rd defendant. In such view of the matter, the decree cannot be considered to be an *ex parte* decree and hence, an application under Order 9 Rule 13 is not maintainable. Challenging the order of return passed by the trial Court, the present revision petition has been filed seeking indulgence of this Court for a direction to number the Order 9 Rule 13 application.

3. A perusal of first proviso to Order 9 Rule 13 indicates that where the decree is of such a nature that it cannot be set aside as against



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one of defendants only, it can be set aside as against all or any of the other defendants also. Therefore, it is clear that even if a decree has been passed on merits as against one of the defendants, an application under Order 9 Rule 13 filed by the defendants who were already set ex parte is maintainable. Therefore, the learned Principal District Judge, Karur is directed to number the said application and pass orders on merits and in accordance with law.

4. With the above said observations, this Civil Revision Petition stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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**Note: Registry is directed to return thereafter
the original impugned order.**



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- To
- 1.The Principal District Judge,
Karur.
 - 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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20.02.2023