



*C.R.P.(MD) No.1121 of 2023*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 19.07.2023**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN  
THILAKAVADI**

C.R.P.(MD) No.1121 of 2023

and

CMP(MD) No.5741 of 2023

Rakel

... Petitioner

Vs.

1.Juliet Geetha Bai

2.Dadly Devaraj

(Second respondent is represented by his  
Power of Attorney the first respondent)

3.Arumugasamy

4.Balakumar @ Aliyas Jernas

5.Veerakumar

6.Hilda Jeyakumari

... Respondents

Prayer :- Petition filed under Article 227 of Constitution of India, prays  
to call for the entire records pertaining to the order passed by the learned  
Principal Sub Judge, Thanjavur, in I.A.No.588 of 2022 in O.S.No.57 of



C.R.P.(MD) No.1121 of 2023

2019 dated 03.02.2023 and set aside the same by allowing this civil revision petition.

For Petitioner : Mr.R.L.Dhilipan Pandian

For R1 & R2 : Mr.M.R.Sreenivasen

For R3, R4,  
R5 & R6 : No appearance

### **ORDER**

This revision petition is preferred as against the order passed by the learned Principal Sub Judge, Thanjavur, in I.A.No.588 of 2022 in O.S.No.57 of 2019, dated 03.02.2023.

2. The suit in O.S.No.57 of 2019 was preferred by the respondents 1 and 2 / plaintiffs for the relief of declaration of title and recovery of possession. When the suit was at the stage of cross examination of P.W1, the petitioner and other defendants failed to cross examine P.W.1. Hence, they were set *ex parte*. Thereafter, the petitioner/5th defendant filed a petition in I.A.No.588 of 2022 for setting aside the *ex parte* order passed



*C.R.P.(MD) No.1121 of 2023*

on 03.02.2023. The same was resisted on the side of the respondents 1 and 2 by stating that the petitioner were all along watching the proceedings and they purposely remained ex parte and the reason for non-appearance on the subsequent hearing dates, were not stated in the petition and therefore, the petition is devoid of merits and the same is liable to be dismissed.

3. The trial Court, after perusing the petition and counter statement and the arguments advanced by the respective counsel, dismissed the above petition by stating that at the stage of pronouncing the judgment, the above petition is filed. Aggrieved by this, the present revision petition is preferred.

4. The learned counsel appearing for the revision petitioner would submit that the petitioner is the resident of Dindigul District and he was unable to get proper instructions from his counsel about the hearing dates and he was not aware of the date for cross-examination of the witness. Therefore, his absence was not willful or wanton. He would further



*C.R.P.(MD) No.1121 of 2023*

submit that without considering the reason put forth by the petitioner, the trial Court mechanically accepted the version of the respondents and dismissed the above petition. He would also contend that the petitioner has good case to establish before the Court and therefore, sufficient opportunity should be afforded to the petitioner. Hence, he prays to allow this petition.

5. Per contra, the learned counsel for the respondents 1 and 2 / plaintiffs would submit that the above petition was filed with an intention to drag on the proceedings and the relief claimed by the petitioner is devoid of merits.

6. Heard on both sides and records perused.

7. Though sufficient cause is not shown by the petitioner for his non-appearance, however, in the interest of justice to afford sufficient opportunity to the petitioner, the trial Court ought to have considered the petition filed by the petitioner by imposing cost as compensation to the



*C.R.P.(MD) No.1121 of 2023*

other side condemning inactiveness of the petitioner for his non-appearance in the proceedings. Hence, the order passed in I.A.No. 588 of 2022 in O.S.No.57 of 2019 is set aside. The petitioner is directed to pay the cost of Rs.10,000/- to the respondents 1 and 2 directly. Considering the age of the suit, this Court directs the learned Principal Sub Judge, Thanjavur, to dispose of the suit as expeditiously as possible, by affording sufficient opportunities to the parties to putforth their contention, within a period of three months from the date of receipt of a copy of this order. Accordingly this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed.

**19.07.2023**

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

To

The Principal Sub Judge,  
Thanjavur.



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*C.R.P.(MD) No.1121 of 2023*

**K.GOVINDARAJAN THILAKAVADI, J.**

cp

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