



C.R.P.(MD) No.2116 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.2116 of 2023

and

C.M.P.(MD) No.10641 of 2023

1.T.K.Meera

2.T.K.Rameshbabu

... Petitioners

Vs.

T.R.Gayathri

... Respondent

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 20.02.2023 passed by the Principal Sub Court, Madurai in I.A.No.1 of 2023 in O.S.No.476 of 2012 in so far as the conditional clause.

For Petitioners : Mr.K.Sudalaiyandi

ORDER

This Civil Revision Petition has been filed by the petitioners to set aside the fair and decreetal order dated 20.02.2023 passed by the Principal Sub Court, Madurai in I.A.No.1 of 2023 in O.S.No.476 of 2012 in so far as the conditional clause.



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2. The above suit in O.S.No.476 of 2012 was filed by the respondent/plaintiff before the Principal Subordinate Court, Madurai for partition, future mesne profits and for permanent injunction. The petitioners who are the first and third respondents in the suit, remained absent in the suit proceedings inspite of service of notice. Therefore, an *exparte* order was passed against the petitioners/first and third defendants on 09.07.2012.

3. The petitioners/first and third defendants thereafter filed I.A.No.1 of 2023 to set aside the *exparte* order dated 09.07.2012 passed against them. The Trial Court, after considering the averments made in the affidavit, allowed the I.A.No.1 of 2023 on condition that the petitioners shall pay cost of Rs.5,000/- to the District Legal Service Authority, Madurai on or before 28.02.2023, failing which, the I.A. shall stand automatically dismissed. As the petitioners/first and third defendants failed to comply with the conditional order, I.A.No.1 of 2023 stood automatically dismissed. Therefore, the petitioners were constrained to approach this Court for setting aside the impugned order dated 20.02.2023 passed in I.A.No.1 of 2023 in O.S.No.476 of 2012 in so far as the conditional clause.



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4. It is submitted that the suit property belonged to one late T.B.Krishnamachari. He died in the year 2012 by leaving the respondent/plaintiff, first petitioner/first defendant, late T.B.K.Ganeshbabu who is husband of the second defendant and the third petitioner/third defendant as his legal heirs. It is submitted that after the death of the T.B.Krishnamachari, all the legal heirs are in joint possession of the suit property and due to the misunderstanding between the legal heirs, the respondent/plaintiff filed the above suit for partition of the suit properties.

5. It is submitted that the first petitioner/first defendant is suffering from hearing impaired and the second petitioner/third defendant is a common IQ person and they have not known the procedure of the court proceedings. It is further submitted that the second defendant was threatening the petitioners by stating that she will throw out them from the suit property and only thereafter, the petitioners came to know about the *exparte* order passed against them in the suit. Immediately, the petitioners filed I.A.No.1 of 1 of 2023 to set aside the *exparte* order dated 16.02.2023 passed against them. The Trial Court allowed the same *vide* impugned order dated 20.02.2023 on condition that the petitioners shall pay cost of Rs.5,000/- to the District Legal Service Authority, Madurai on or before 28.02.2023.



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6. It is further submitted that the counsel for the petitioners applied for certified copy of the order dated 20.02.2023 passed in I.A.No.1 of 2023, on 24.02.2023 itself. However, the order was made ready on 27.07.2023 after expiry of the date fixed by the Court. Therefore, the petitioners were unable to pay the said amount of Rs.5,000/- in time. Consequently, I.A.No.1 of 2023 stood automatically dismissed. It is therefore prayed for setting aside the impugned order as far as the conditional clause.

7. Considering the facts and circumstances of the case and considering the fact that the first petitioner/first defendant is suffering from hearing impaired and the second petitioner/third defendant is a common IQ person, the cost of Rs.5,000/- imposed by the Trial Court is reduced to Rs.500/-. The petitioners shall pay the said amount of Rs.500/- to the District Legal Service Authority, Madurai on or before 15.09.2023, failing which, I.A.No.1 of 2023 filed by the petitioners will stand automatically dismissed without reference to the Court.

8. On payment of such cost, the *exparte* order dated 09.07.2012 passed against the petitioners/first and third defendants is set aside.



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9. Accordingly, this Civil Revision Petition is allowed with the above condition. No cost. Consequently, connected Miscellaneous Petition is closed.

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

The Principal Sub Judge,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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