



C.R.P.(MD) No.931 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.931 of 2023

and

C.M.P.(MD) No.4306 of 2023

1.S.Pushpam

2.S.Selvakumaran

3.S.Thilagavathy

4.S.Soundaram

5.S.Raja

... Petitioners

Vs.

1.M.Chinnasamy

2.T.Mayil

3.D.Murugan

4.M.Pandi @ Samiyar

5.V.Kattari

6.K.Krishnan

7.S.Nandagopal

8.K.Renganathan



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9.M.Chinnu

10.K.Manthiyan

11.G.Maliyan

12.M.Alagarraja

13.M.Sasikumar

14.Saravanan

15.S.Murugan

16.R.Karuppaiah

17.M.Mani

18.P.Raja

19.K.Solai

20.S.Muthu

21.M.Ponnuthai

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the order and decretal order dated 16.09.2022 made in I.A.No.1 of 2022 in O.S.No.213 of 2016 on the file of the Subordinate Court, Uthamapalayam.

For Petitioner : Mr.S.Siva Thilakar

For R8 & R12 : M/s.B.Bhuvaneswari



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ORDER

This Civil Revision Petition has been filed to set aside the fair order and decretal order dated 16.09.2022 passed by the Sub Court, Uthamapalayam in I.A.No.1 of 2022 in O.S.No.213 of 2016.

2. The petitioners are the plaintiffs in O.S.No.213 of 2016 on the file of the Sub Court, Uthamapalayam. The said suit has been filed by the petitioners herein against the respondents for declaration and recovery of possession and future mense profits in respect of the suit schedule properties.

3. Earlier, the respondents who are the 2nd to 4th, 6th & 7th, 9th & 10th, 15th & 16th, 19th to 24th, 26th to 28th, 30th, 32th and 34th defendants in the above suit have not filed their Written Statement. Therefore, the respondents were set *exparte* on 27.01.2017. Under these circumstances, the some of the respondents filed application to set aside the *exparte* decree dated 27.01.2017, but, they were again set *exparte* on 04.06.2018.



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4. Thereafter, the trial commenced. It appears that the plaintiffs' side witness appeared and deposed evidence. Thereafter, on 16.04.2021, the said suit was partly allowed by setting the respondents *exparte*. Therefore, the respondents filed I.A.No.1 of 2022 in O.S.No.213 of 2016 to condone the delay of 105 days in filing the application to set aside the *exparte* decree dated 16.04.2021. The Court below has allowed the said application *vide* impugned order dated 16.09.2022 subject to the payment of cost of Rs.4,000/- to the petitioners. The amount is said to have been received by the petitioners.

5. The learned counsel for the eighth and twelfth respondents submits that subsequent to the impugned order dated 16.09.2022, the application for setting aside the *exparte* decree dated 16.04.2021 has to be considered and order has to be passed. However, the Sub Court is unable to pass any further order in view of the Stay order secured by the petitioner on 05.04.2023. It is therefore submitted that there is no merits in the challenge to the impugned order as the impugned order is well reasoned and requires no interference and is prayed for dismissal of the present Civil Revision Petition.



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WEB COPY 6. Having considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the eighth and twelfth respondents, there is no case made out for interference with the impugned order dated 16.09.2022 condoning the delay of 105 days in filing of the application to set aside the *exparte* decree dated 16.04.2021.

7. Since the suit has been filed for declaration and recovery of possession and future mense profits, the matter would require detailed trial. Therefore, this Civil Revision Petition is liable to be dismissed.

8. Considering the fact that the suit is of the year 2016, there shall be a direction to the Sub Court, Uthamapalayam to dispose of the O.S.No. 213 of 2016, as expeditiously as possible, preferably, within a period of 9 months from the date of receipt of a copy of this order.

9. It is made clear that the petitioners and the respondent shall co-operate with the court proceedings. In case the petitioners and the respondents fail to co-operate with the court proceedings, the Court shall pass orders on merits based on the available records.



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C.SARAVANAN, J.

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10. Accordingly, this Civil Revision Petition is dismissed with the above direction. No cost. Consequently, connected Miscellaneous Petition is closed.

19.06.2023

Internet: Yes/No

Index: Yes/ No

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To
The Subordinate Court,
Uthamapalayam.

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