



CRP No.566 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

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1. Minor R.Anandheeswaran s/o Rajkumar,
rep. by his next friend and Guardian,
his father Rajkumar

2. P.Rajkumar

... Petitioners

/vs/

1. Minor Abinayashree
2. M.R.Suganthi

... Respondents

PRAYER : This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 08.01.2024 passed in I.A.No.6 of 2023 in O.S.No.220/2022 on the file of Subordinate Judge, Rasipuram.

For Petitioners	... Mr. J.Prithivi
For respondents/ Caveator	... Mr. Ali Hassan Khan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 08.01.2024 passed in I.A.No.6 of 2023 in O.S.No.220/2022 on the file of Subordinate Judge, Rasipuram.



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2. The petitioners herein are the defendants and the respondents herein are the plaintiffs in the above said suit, which was filed for declaration that the gift settlement deed executed by the second defendant in favour of his minor son, first defendant on 09.04.2010 as null and void. In the suit, the petitioners/defendants were set exparte on 08.08.2023. To set aside the above exparte order, the petitioners filed an application in I.A.No.6/2023 on 02.10.2023 and the same was dismissed. Challenging the above order, this civil revision petition has been filed.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent/caveator and I have perused the materials on record.

4. On perusal of records, it reveals that the second petitioner/second defendant herein and the second respondent/second plaintiff are husband and wife and the first petitioner and the first respondent herein are their children. The plaintiffs filed the above suit for declaration that the gift deed executed by the second petitioner in favour of his minor first



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petitioner as null and void. Pending suit, the petitioners were set exparte on 08.08.2023 and to set aside the same, they filed application.

5. In the affidavit filed along with the petition to set aside the exparte order, the petitioner stated that, on 8.8.2023, the suit was posted for filing written statement, but on that day, he was not able to give instructions to his counsel, since he had taken his son to the hospital for his illness. The learned Judge, after perusing the records and notes paper, held that, already the petitioners have filed their written statement; on 04.07.2023, the counsel for the petitioners has reported that no instructions from the petitioners; hence the suit was posted for appearance the petitioners on 08.08.2023; and since there is no representation on behalf of the petitioners, they were set exparte. Therefore, the learned Judge observed that the petitioners have not stated the true facts in the affidavit and also not approached the court with clean hands, thereby, he dismissed the petition.



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6. It is the contention of the petitioners that, by inadvertently, they have stated that written statement not filed, however, considering the fact that, for the exparte order passed on 08.08.2023, the petitioners have filed the petition on 04.10.2023 itself to set aside the exparte order. In such circumstances, this court is of the view that to meet the ends of justice, fair chances have to be given to the parties to prove their case and hence, inclined to set aside the impugned order passed in I.A.No.6/2023 in O.S.No.220/2022.

7. Accordingly, the impugned order passed by the Trial Judge is set aside and the Civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet : Yes/No
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To

The Subordinate Judge, Rasipuram.



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V.SIVAGNANAM ,J.

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