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C.R.P.No.850 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-12-2024

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

CRP No. 850 of 2023

and

C.M.P.No.6399 of 2022

N.VIGNESH

S/O. M.K. NATARAJ, NO.516, UTHUKULI ROAD,
KUNNATHUR VILLAGE, AVINASHI TALUK,
TIRUPPUR DISTRICT.

PETITIONER

Vs

MARIAMMAL

W/O. PALANISAMY, NO.124/64, GOBI MAIN ROAD,
KUNNATHUR,

REP. BY HER POWER AGENT, T.P.MURUGESAN,
S/O. M. PALANISAMY, NO.64/1, GOBI MAIN ROAD,
KUNNATHUR, AVINASHI TALUK.

RESPONDENT

Petition filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 14.02.2023 in I.A.No.20 of 2023 in O.S.No.9 of 2020 on the file of the learned District Munsif cum Judicial Magistrate, Uthukuli, Tiruppur District.

For Petitioner:

Mr.S. KAITHAMALAI KUMARAN

For Respondent:

Mr.K. GOVI GANESAN



C.R.P.No.850 of 2023

ORDER

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Challenging the order dismissing the application filed under Order IX, Rule 7 of CPC seeking to set aside the ex parte order dated 14.02.2023, the 1st defendant is before this court with the present revision petition.

2. The respondent is the sole plaintiff in the suit. The revision petitioner was contesting the suit. The suit has been filed for a decree and judgement (i) declaring that the plaintiff is the absolute owner of 3/4th share in the suit property and directing the defendants to surrender the vacant possession of the suit property; (2) for a preliminary decree for partition dividing the suit property into 4 equal shares and allotting 3 such shares to the plaintiff and to put the plaintiff in possession of her shares so allotted to her; for damages at the rate of Rs.2,000/- per year from the date of the suit till the date of delivery of possession of the suit property. The trial in the suit had commenced. When the plaintiff was present for his cross-examination, the defendant was not ready for the cross-examination of the plaintiff (P.W.1) continuously for four hearings on 14.02.2022, 03.03.2022, 15.03.2022, and 22.03.2022, and as the cross-examination was not done on 31.03.2022 the defendant was set ex parte on that date.

3. According to the revision petitioner/1st defendant, the plaintiff (P.W.1)



C.R.P.No.850 of 2023

was not ready for the cross examination in the previous hearings and he was absent on 18.7.2022, 02.08.2022, 16.08.2022, 29.08.2022, 10.10.2022, 08.11.2022, 16.11.2022 and on 12.12.2022 and the plaintiff (P.W.1) did appear only on 03.01.2023. But, on 03.01.2023, the counsel for the 1st defendant sought time for the cross-examination of the plaintiff. But the 1st defendant was set ex parte on that date.

4. Be that as it may, as rightly found by the court below, when the witness was present, it is the duty of the counsel on the other side to cross-examine the witness. Merely because P.W.1 was absent for many hearings, that by itself would not give any license to the 1st defendant to adopt the same method and delay the proceedings. Therefore, the observation made by the court below in this regard does not require any interference. However, considering the fact that the suit is for declaration and partition and there are triable issues, this court is of the view that giving an opportunity to the revision petitioner/1st defendant to participate in the trial with certain terms would only meet the ends of justice.

5. Accordingly, this court is inclined to set aside the order impugned in the revision petition on a condition that the revision petitioner/1st defendant should pay a sum of Rs. 10,000/- (Rupees Ten Thousand only) as costs directly



C.R.P.No.850 of 2023

to the respondent/plaintiff or through his counsel within a period of one month from the date of receipt of a copy of this order. If the respondent/plaintiff or her counsel, as the case may be, was not willing to receive the costs, the costs shall be deposited into the court to the credit of the original suit within the time frame prescribed above. On such deposit, the plaintiff is entitled to withdraw the same as per the procedure being followed presently. If the cost is paid, the impugned order will stand set aside, and the learned District Munsif cum Judicial Magistrate shall thereafter proceed with the trial of the suit and dispose of the same on its own merits as expeditiously as possible preferably within a period of three months from the date of payment of cost. It is made clear that if the cost is not paid within the time stipulated above, the revision petition will stand dismissed without any reference to the court.

In the result, this civil revision petition is disposed of accordingly with the above directions. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no
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To

1.The District Munsif cum Judicial Magistrate, Uthukuli, Tiruppur District.



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C.R.P.No.850 of 2023



WEB COPY



C.R.P.No.850 of 2023

N.SATHISH KUMAR.J.,

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C.R.P.No.850 of 2023

12..12..2024