



C.R.P.No.996 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.R.P.No.996 of 2023

and C.M.P.No.7315 of 2023

Natarajan

...Petitioner

vs.

1. M.Laksmi

2. M.Vimal

3. M.Hema

4. Govindhan

5. Village Administrative Officer,
T.Pudupalayam, Chinnathambipalayam Post,
Tiruchengode Taluk,
Namakkal District.

6. The Tahsildar,
Velur Road,
Tiruchengode Taluk,
Namakkal District.

7. The District Collector,
Namakkal

...Respondents

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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 11.01.2023 made in I.A.No.9 of 2022 in O.S.No.43 of 2014 on the file of the Principal District Munsif Court at Tiruchengode.

For Petitioner : Mr.T.L.Thirumalaisamy
For Respondents : No appearance for R1 to R4
: Mr.N. Muthuvel
Government Advocate for R5 to R7

ORDER

This civil revision petition is filed by the sole plaintiff Natarajan, against the Order dated 11.01.2023 passed by the trial Court (Principal District Munsif, Tiruchengode) in I.A.No.9 of 2022 in O.S.No.43 of 2014 under Order IX Rule 7 and Section 151 of Civil Procedure Code, 1908.

2. Heard Mr.T.L.Thirumalaisamy, learned counsel for the petitioner and Mr.N.Muthuvel, learned Government Advocate appearing for the respondents 5 to 7.

3. The petitioner/plaintiff filed a suit for the relief of declaration of title and permanent injunction, and for other reliefs in respect of house



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property. During the pendency of the suit, the 2nd defendant Govindhan died and the legal heirs of the 2nd defendant were impleaded as Defendant No.5 to 7. For want of written statement, the legal heirs of the second defendant (D5 to D7) were set exparte and they made an application in I.A.No.9 of 2022 to set aside the exparte order passed against them and the same was allowed. Aggrieved, the present revision petition is filed by the sole plaintiff.

4. It has been averred in the petition that they had given instructions to their counsel to file a memo adopting the written statement of their father and it was not done so. Consequently, they were set exparte for non filing of written statement.

5. The present revision petitioner/plaintiff resisting the said petition by stating that the order of exparte was passed on 31.10.2019 and after lapse of three years, the above said petition was filed and sought for dismissal of the said order.

6. Upon consideration, the learned trial Court allowed the said petition.



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7. It appears that when the suit was posted for trial on 17.08.2015, it was reported to the trial Court that the 2nd defendant died on 04.08.2018.

Thereafter, defendants no.5 to 7 were brought on record as they are the legal heirs of the deceased 2nd defendant. When the matter was posted for filing of written statement of defendants no.5 to 7, after several adjournments as it was not filed, defendants no.5 to 7 were set exparte on 31.10.2019. Thereafter, defendants no.5 to 7 filed an application in I.A.No.9 of 2022 under Order IX Rule 7 of CPC on 25.11.2022 stating that though they had given instructions to their counsel to file memo adopting the written statement of their father, it was not done so. On 23.01.2023, the said I.A. Was ordered to be allowed.

8. For non filing of written statement, if the defendant is set exparte, then the relevant provision in order to set aside the order, petition has to be filed under Order IX Rule 13 CPC subject to Article 137 of the Limitation Act, 1963.

9. It is pellucid that, despite the grating of adjournments for filing of written statement by the defendants no.5 to 7, as they did not choose to file the same, they were set exparte on 31.10.2019. Therefore, an order was passed as per the Order VIII Rule 10 CPC setting them exparte for



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non filing of written statement as against the defendants no.5 to 7. In those situations, an application under Order IX Rule 13 CPC has to be taken out within 30 days. If necessary, the said application has to be filed along with the application under Section 5 of the Limitation act, 1963, in case, if it is delayed.

10. The exparte order was passed on 31.10.2019 . The application in I.A.No.9 of 2022 under Order IX Rule 7 CPC was filed on 25.11.2022. There is no reasons have to be assigned in the affidavit. Therefore, in the given circumstances, the order of the trial court is liable to be interfered with. Sequel to this, this Criminal Revision Petition stands allowed and the order passed in I.A.No.9 of 2022 dated 11.01.2023 stands set aside. There is no order as to costs. Consequently, connected Civil Miscellaneous Petition stands closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Cases : Yes/No
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R.KALAIMATHI, J.

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To

The Principal District Munsif Court, Tiruchengode.

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