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C.R.P.(PD)No.2941 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2941 of 2024

and

C.M.P.No.15737 of 2024

M.Selvam (Died)

1.S.Vasantha

2.S.Nandhakumar

3.S.Vanitha

4.Minor Sethuraman

Represented by his Mother/S.Vasantha/
the 1st petitioner herein

.. Petitioners

Vs.

1.S.Balakrishnan

2.Anitha

3.Preetha

.. Respondents

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order and decree made in I.A.No.8 of 2023 in O.S.No.41 of 2010 on the file of the learned Subordinate Judge, Gudiyattam, Vellore District dated 14.02.2024.



C.R.P.(PD)No.2941 of 2024

For Petitioners : Mr.K.A.Ravindran

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ORDER

The present Civil Revision Petition challenges the order passed by the learned Subordinate Judge at Gudiyattam, Vellore District in I.A.No.8 of 2023 in O.S.No.41 of 2010 dated 14.02.2024.

2. O.S.No.41 of 2010 was presented by the sole plaintiff, namely M.Selvam, as against one sole defendant, namely R.Sri Hari.

3. Unfortunately, pending the suit, both the sole plaintiff as well as the sole defendant passed away constraining the legal heirs of the plaintiff to bring themselves on record and also to bring on record the legal representatives of the deceased sole defendant. This process was completed only on 04.01.2023 when the amended plaint was filed before the Court. Time was granted to defendant Nos.3 to 5 to file their written statement. They did not do so and therefore, they were set *ex parte* on 12.04.2023.

4. On 17.07.2023, defendant Nos.3 to 5 filed an application to set aside the *ex parte* order under Order IX Rule 7 of the Code of Civil Procedure together with their written statement. The learned trial Judge



C.R.P.(PD)No.2941 of 2024

taking into consideration the averments made in the affidavit and after receipt of a counter from the plaintiffs allowed the application imposing a cost of Rs.3,000/- as a condition to set aside the *ex parte* order. Against which, the present revision has been filed before this Court.

5. Heard Mr.K.A.Ravindran, appearing on behalf of the civil revision petitioners and I have gone through the records available.

6. The position of law with respect to setting aside the *ex parte* order had been settled by the Supreme Court as early as in the year 1955 in the judgment of ***Sangram Singh vs Election Tribunal, Kotah, Bhurey Lal Baya [AIR 1955 SUPREME COURT 425]*** as well as in the judgment of ***Arjun Singh vs Mohindra Kumar & Ors. [AIR 1964 SUPREME COURT 993]***.

7. An application under Order IX Rule 7 of the Code of Civil Procedure should not be looked through the same lens as an application under Section 5 of the Limitation Act. In fact, there is a difference between a “good cause” that has to be shown under Order IX Rule 7 of the Code of



C.R.P.(PD)No.2941 of 2024

Civil Procedure and the “sufficient cause” that has to be shown under Section 5 of the Limitation Act. A “good cause” requires much more liberal interpretation than the interpretation given to Section 5 of the Limitation Act. The reasons that have been given is that as they were brought on record only in the year 2023, they were not in a position to give instructions to their lawyers to file written statement immediately. In this long drawn proceedings, the delay, if at all is only for 3 months, has to be taken into consideration while dealing with an application under Order IX Rule 7.

8. As serious rights over immovable properties are involved, the learned Judge has exercised his discretion and set aside the *ex parte* order. The affidavit discloses a “good cause” and the factum that the plaintiffs were seriously pursuing the proceeding initiated against them is also clear from the fact that they preferred a revision before this Court in C.R.P.No.2658 of 2016.

9. The 1st defendant had already filed a written statement and the present defendants are only his legal representatives. They cannot obviously exceed the position that has been taken by the original defendant. The learned Judge having exercised his discretion, I am not inclined to interfere



C.R.P.(PD)No.2941 of 2024

with the order passed by the learned Subordinate Judge at Gudiyattam.

Accordingly, the Civil Revision Petition stands dismissed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

10. At this stage, Mr.K.A.Ravindran would point out that the suit is of the year 2010 and has been pending for the past 14 years. The learned trial Judge is requested to apply the appropriate administrative instructions given for the suits pending for more than 10 years to the present suit and dispose of the same as expeditiously as possible.

06.08.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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C.R.P.(PD)No.2941 of 2024

V. LAKSHMINARAYANAN, J.

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To

The learned Subordinate Judge, Gudiyattam,
Vellore District

C.R.P.(PD)No.2941 of 2024
and
C.M.P.No.15737 of 2024



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C.R.P.(PD)No.2941 of 2024

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