



C.R.P.[NPD]No.875 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.875 of 2014

1.Sharmila

2.Suresh

.. Petitioners

Vs.

1.Lakshmanan

2.Parvathi

3.Revathi

4.Veena

5.Thatsinamorthy

6.Achutha Kumar

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 31.10.2013 made in I.A.No.123 of 201 in O.S.No.102 of 2009 on the file of the Principal Sub-Court, Krishnagiri.

For Petitioners : Mr.S.Saravanakumar

For R1, R3 to R6 : Mr.P.Mani

For R2 : No Appearance



C.R.P.[NPD]No.875 of 2014

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ORDER

This Civil Revision Petition has been filed seeking to set aside the order dated 31.10.2013 made in I.A.No.123 of 201 in O.S.No.102 of 2009 on the file of the Principal Sub-Court, Krishnagiri.

2.The case of the petitioners is that the petitioners originally filed a partition suit, seeking for separate possession of the suit property in O.S.No.102 of 2009, which was dismissed for default on 02.01.2012. Thereafter, the petitioners filed an application in I.A.No.123 of 2013, to restore the suit and the same has been allowed on payment of costs of Rs.1000/- payable to the respondents on or before 30.10.2013. On 31.10.2013, since there was no representation for the petitioners, the petition came to be dismissed. Aggrieved over the same, the challenge has been made against the rejection of application filed under Order 9 Rule 9 CPC, to restore the suit, which was dismissed for default.

3.Heard the learned counsel appearing for the petitioners as well as



C.R.P.[NPD]No.875 of 2014

the respondents.

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4. When the application filed under Order 9 Rule 9 was rejected, the parties have an appeal remedy under Section 96 CPC before the District Court. However, in the present case, without exhausting appeal remedy before the concerned District Court, the petitioner has come forward with the present Revision. Further, the trial Court can even review the order taking note of the substantial rights of the parties involved in the suit and ought to have granted an opportunity to the parties to contest the suit on merits.

5. Therefore, without going into the merits of the revision, since the petitioner is prosecuting the issue before the wrong forum, this Court feels it appropriate to direct the trial Court to review its order dated 31.10.2013 made in I.A.No.123 of 2013 in O.S.No.102 of 2009 and give an opportunity to the petitioners/plaintiffs who filed the suit for partition and declaration and taking note of the substantial rights of the parties involved in the suit, permit the parties to contest the suit on merits.



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C.R.P.[NPD]No.875 of 2014

6. Accordingly, this Revision Petition is disposed of, directing the trial Court to review its order dated 31.10.2013 made in I.A.No.123 of 2013 in O.S.No.102 of 2009 and extend an opportunity to the petitioners/plaintiffs to get along with the suit in the interest of justice and permit both the parties to contest the suit on merits since substantial rights of the parties are involved in the suit. No costs.

07.11.2024

rst

Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

To:

The Principal Sub-Court,
Krishnagiri.



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C.R.P.[NPD]No.875 of 2014



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C.R.P.[NPD]No.875 of 2014

N.SATHISH KUMAR, J.

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C.R.P.[NPD]No.875 of 2014

07.11.2024