



C.R.P.No.3541 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.3541 of 2024
and C.M.P.No.19153 of 2024

1. Gopal
2. Ramesh
3. Chinnathambi

... Petitioners

Vs

Kolandan (Died)

1. Pappathi
2. K.Thavasiyappan
3. K.Kandasamy

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the order of return dated 04.07.2024 in unnumbered I.A.No..... of 2024 in O.S.No.179 of 2011 on the file of the District Munsif Court, Kumarapalayam.

For Petitioners : Mr.C.Prabakaran



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ORDER

This Civil Revision Petition has been filed by the petitioners against the order passed by the learned District Munsif, Kumarapalayam in unnumbered I.A.No..... of 2024 in O.S.No.179 of 2011 dated 04.07.2024.

2. The brief facts of the case is that the petitioners are defendants 1 to 3 in the suit filed by the respondents/plaintiffs in O.S.No.179 of 2011 before the Additional District Munsif Court, Tiruchengode, seeking for declaration of title, delivery of possession and permanent injunction. In the said suit, the petitioners after filing written statement and additional written statement, have failed to appear before the trial Court, therefore, they were set ex parte on 15.11.2019 and the trial Court, based on the evidence of PW1 and marking of Ex.A1 to A11, had decreed the suit vide Judgment dated 29.11.2019. Thereafter, the petitioners/defendants 1 to 3 have filed the application under Section 5 of the Limitation Act and Section 151 of CPC seeking to condone the delay of 1470 days in filing the application to set aside the ex parte decree dated 29.11.2019. Whereas, the trial Court, without numbering the said application, had returned the same



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stating that the application filed by the petitioner under Section 5 of the Limitation Act is not maintainable. Aggrieved over the same, the present revision petition has been filed by the petitioners.

3. Learned counsel for the petitioners submitted that the petitioners/defendants 1 to 3 failed to appear before the court and consequently, no evidence could be recorded on behalf of the defendants and the trial Court had passed an ex parte judgment against them. In such proceedings, the Court must proceed under Rule 2 and not under Rule 3 of Order 17 and the Court should proceed to dispose of the matter in any of the modes provided under Order IX of CPC. He further submitted that in such circumstances, the application made by the petitioners/defendants 1 to 3 under Order IX Rule 13 after passing of the ex parte decree is maintainable. He also submitted that in such circumstances, the trial Court ought to have numbered the application filed under Section 5 of the Limitation Act and decide the matter on merits and thereafter, ought to have proceed to decide the matter filed under Order IX Rule 13 of CPC. Hence, he prayed to set aside the return order dated 04.07.2024.



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4. Heard the learned counsel for the petitioners and perused the materials available on record.

5. It is seen from the records that the petitioners, who are defendants 1 to 3, after filing written statement and additional written statement, had failed to appear before the trial Court and thereby, the trial Court proceeded to pass judgment and decree. Therefore, the judgment so passed would be an ex parte judgment, thereby, the petition under Order IX Rule 13 is maintainable, but of course, it can be taken subject to condonation of the delay in filing the petition. However, the trial Court had decided to return the petition for condoning the delay even without numbering it.

6. In view of the above, this Civil Revision Petition stands allowed and the order of return made by the learned District Munsif (FAC), Kumarapalayam, in unnumbered I.A.No..... of 2024 in O.S.No.179 of 2011 on 04.07.2024 is hereby set aside and the learned District Munsif (FAC), Kumarapalayam, is directed to take the unnumbered I.A.No..... of 2024 in O.S.No.179 of 2011 on file, number



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it, issue notice and after hearing both the parties, shall pass appropriate order on merits in accordance with law. Conquently, the connected Civil Miscellaneous Petition is also closed. No costs.

03.09.2024

Index : Yes / No

Neutral Citation : Yes / No

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Note : Registry is directed to return the original papers to the counsel for the petitioners forthwith to enable him to represent before the trial Court.

To

The District Munsif Court, Kumarapalayam.



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A.D.JAGADISH CHANDIRA, J.

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