



C.R.P. (MD) No. 990 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

C.R.P. (MD) No. 990 of 2024
and
C.M.P. (MD). No. 5379 of 2024

V.M.Kamaraj

... Petitioner / Petitioner / 8th Defendant
-vs-

1. Ayisha Beevi

2. Balkish Beevi

... Respondents / Respondents
/ Plaintiffs

Prayer:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, to call for the records pertaining to the impugned Fair and Decretal Order made in I.A. No. 17 of 2020 in O.S. No. 145 of 2012 on the file of the learned District Munsif cum Judicial Magistrate No. I, Kodaikanal and set aside the same by allowing this Civil Revision Petition.

For Petitioner : Mr. R.Shankar Ganesh

For Respondents : Mr. S.Madhavan

ORDER

This Civil Revision Petition invoking under Article 227 of the Constitution of India has been filed challenging the order dated 07.09.2023 in I.A. No. 17 of 2020 in O.S. No. 145 of 2012 (hereinafter referred to as the 'impugned order' for short) passed by the District Munsif cum Judicial



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Magistrate No. I, Kodaikanal (hereinafter referred to as the 'Trial Court' for short).

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2. The parties are hereinafter referred to as by the description in the proceedings in O.S. No. 145 of 2012 before the Trial Court for the sake of clarity and convenience.

3. Heard Mr. R.Shankar Ganesh, Learned Counsel for the Eighth Defendant and Mr. S.Madhavan, Learned Counsel for the Plaintiffs and perused the materials placed on record, apart from the pleadings of the parties.

4. The suit in O.S. No. 145 of 2012 has been filed seeking partition of the properties of the Plaintiffs and the Defendants in which an *ex parte* decree was passed on 05.12.2015. The application in I.A. No. 370 of 2017 filed by the Eighth Defendant to set aside that *ex parte* decree was allowed by order dated 18.12.2019 on condition a sum of Rs.1000/- payment of costs to the Plaintiffs on or before 10.01.2020. According to the Eighth Defendant, as she was suffering from diarrhea at that point of time, she could not comply with the condition within the said time limit, and the Learned Counsel for the Plaintiff refused to receive the costs when it was tendered on 12.01.2020 and the said



application was dismissed by the Court on 13.01.2020. Thereafter, the Eighth Defendant filed another application in I.A. No. 17 of 2020 to set aside the said order and extend the time for receiving payment, but it was dismissed by the impugned order.

6. The Division Bench of this Court in a decision in ***Gowri Ammal -vs- Murugan***, 2006 (3) CTC, has held that a conjoint reading of Section 148, 149 and 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC' for short) would make it clear that the Court has power to extend time beyond the stipulated period, when sufficient cause exists or events pointed out to the Court for non-compliance of the order are beyond the control of the party, as the object of the Code is not to promote failure of justice. In that backdrop, the Learned Counsel for the Eighth Defendant undertook to pay a sum of Rs. 3,000/- as costs to the Learned Counsel for the Plaintiffs and the same has been paid and a memo has been filed to that effect, which is placed on record.

7. In the aforesaid circumstances, the impugned is set aside and it is held that the condition imposed in the order dated 18.12.2019 in I.A. No. 370 of 2017 has been complied, and the *exparte* decree dated 05.12.2015 passed in



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that suit shall stand set aside, and that the suit is restored to file. The parties shall appear before the Trial Court for the next hearing on 10.07.2024 without fail. If the Written Statement of the Eighth Defendant is not filed before the Trial Court on the said hearing, his right to do so shall stand forfeited. The Trial Court shall frame issues and proceed to record the evidence of the parties by ensuring that there is atleast one effective hearing every week showing progress of the case and after affording opportunity of hearing to all parties concerned following the prescribed procedure, reasoned orders shall be passed dealing with each of the contentions raised by the respective parties on merits and in accordance with law. It shall be ensured that there is atleast one effective hearing every week showing progress of the case, and quarterly reports of compliance are sent to the Registrar (Judicial) of this Court till it is decided finally.

In the result, this Civil Revision Petition is ordered on the aforesaid terms. Consequently, connected miscellaneous petition is closed. No costs.

18.04.2024

Index : Yes/No
Internet : Yes/No
TSG



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- To
1. The District Munsif cum Judicial Magistrate No. I, Kodaikanal.
 2. The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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P.D. AUDIKESAVALU, J.

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