



C.R.P(MD)Nos.2202 & 2210 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)Nos.2202 & 2210 of 2019

and

C.M.P(MD)No.11484 of 2019

C.R.P(MD)No.2202 of 2019:

1.Chidambaram

2.Prakasem

3.Tirumoorthy

4.Triveni

... Petitioners

Vs.

Dhanabackiam (Died)

1.S.Muthaiya

2.S.Vaitheeswaran

3.S.Manohar

4.S.Prabhar

5.R.Selveshwari

6.G.Jothi

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7.R.Pushparani

8.Subbaiya

9.Rajeswari

10.Girija

11.Lokanathan (Died)

12.Lokeswari

13.Umadevi

... Respondents

(Memo, dated 31.01.2024 in USR No.3618 is recorded to the effect that R-11 died vide Court order, dated 15.02.2024 made in C.R.P(MD)No.2202 of 2019)

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 11.02.2019 passed by the learned District Munsif, Lalgudi in I.A.No.312 of 2018 in O.S.No. 157 of 2012 and allow the same.

C.R.P(MD)No.2210 of 2019:

1.Chidambaram

2.Prakasem

3.Tirumoorthy

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C.R.P(MD)Nos.2202 & 2210 of 2019

4.Triveni

... Petitioners

Vs.

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1.S.Muthaiya

2.S.Vaitheeswaran

3.S.Manohar

4.S.Prabhar

5.R.Selveshwari

6.G.Jothi

7.R.Pushparani

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 04.01.2018 passed by the learned District Munsif, Lalgudi in I.A.No.680 of 2017 in O.S.No. 157 of 2012 and allow the same.

In Both the Cases:

For P-2 & P-3 : Mr.R.Balakrishnan

For R-1, R-2, R-4,
R-7, R-12 & R-13 : Mr.H.Lakshmi Shankar

For R-3, R-5, R-6,
R-8 to R-10 : No appearance



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COMMON ORDER

The defendants 7 to 10 in O.S.No.157 of 2012 on the file of the District Munsif Court, Lalgudi are the revision petitioners in both the revision petitions.

2. The respondents in the revision petitions have filed the above suit for partition and separate possession. The plaintiffs' side evidence was closed and it was posted for letting in evidence on the side of the defendants. The defendants have not let in evidence and therefore, they were set *ex parte* on 31.10.2017. They filed I.A.No.680 of 2017 on 05.12.2017 to set aside the *ex parte* order. In the mean time, an *ex parte* decree came to be passed on 17.01.2018. To set aside the *ex parte* decree, the defendants had filed an application under Order IX, Rule 13 of CPC., on 12.02.2018. The applications filed under Order IX, Rule 7 of CPC., and Order IX, Rule 13 of CPC., were dismissed by the Trial Court. Challenging the same, the present revision petitions have been filed.



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3. A perusal of the order passed by the Trial Court in I.A.No.680 of 2017 indicates that the learned Counsel appearing for the defendants before the Trial Court had filed a Memo that, some of the defendants have passed away. However, the said Memo was strongly objected to by the plaintiffs contending that, the defendants are alive and a false Memo has been filed only to drag on the proceedings. Carried away by the said Memo, the Trial Court had refused to set aside the *ex parte* order and the *ex parte* decree and has proceeded to dismiss both these applications.

4. The learned Counsel appearing for the revision petitioners has contended that, without any instructions from the side of the defendants, such an erroneous Memo have been filed by the Counsel, for which, the defendants cannot be held liable. Considering the fact that the applications have been filed in time to set aside the *ex parte* order as well as the *ex parte* decree, the Trial Court ought to have allowed these two applications.



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5. Per contra, the learned Counsel appearing for the respondents herein had contended that the defendants have not approached the Court with clean hand and therefore, the order of the Trial Court may be sustained.

6. This Court is of the view that considering the fact that the application to set aside the *ex parte* decree has been filed in time and it was for the first time that the defendants have been set *ex parte*, the Trial Court ought not to have dismissed the said applications. The orders passed in I.A.No.680 of 2017 and I.A.No.312 of 2018 are hereby set aside and the revision petitions stand allowed on payment of cost of Rs.3,000/- to the High Court Legal Services Authority on or before **04.06.2024**. If the cost is not paid, the revision petitions will stand dismissed automatically without any further reference to this Court.

7. With the above said observation, both the Civil Revision Petitions stand allowed. Consequently, connected Miscellaneous Petition



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stands closed.

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8. Post on 05.06.2024 for reporting compliance.

23.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The District Munsif Court,
Lalgudi.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Officer in-charge/Registrar Judicial,
High Court Legal Services Committee,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)Nos.2202 &
2210 of 2019

23.04.2024