



C.R.P.(MD)No.1866 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.1866 of 2022

and

CMP (MD) No.8393 of 2022

1.Sankilikaruppan

2.Amsavalli

: Petitioners/Appellants/
Petitioners/Defendants

Vs.

Mariappan

: Respondent/Respondent/
Respondent/Plaintiff

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed by the Court of the Subordinate Judge, Sankarankovil, in CMA No.02 of 2021 on 30/06/2022.

For Petitioners : Mr.M.Jothi Basu

For Respondent : No appearance

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order passed by the Court of the Subordinate Judge, Sankarankovil, in CMA No.02 of 2021, dated 30/06/2022.



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2. The facts in brief:-

The suit in OS No.13 of 2012 was filed by the respondent herein Mariappan seeking the relief of declaration that the suit property absolutely belongs to him, namely the items 1 and 2 mentioned in the suit schedule; and for recovery of possession of the site; mandatory injunction for removal of the superstructure and for costs. The suit was decreed *ex-parte* due to non-appearance of the petitioners, on 15/12/2017. So *ex-parte* decree was also passed.

3.To set aside the *ex-parte* decree, they filed IA No.172 of 2018. That came to be dismissed by the trial court. Against which, CMA No.2 of 2021 was preferred by the petitioners. After hearing both sides, the appellate court dismissed the appeal stating that the appeal is not maintainable, since the order is passed on merits and not a rejection order.

4.Against which, this civil revision petition has been preferred.

5.Only short point arises for consideration here.



6.An application was filed by the petitioners under Order IX Rule 13 CPC to set aside the *ex-parte* decree. That was dismissed. Automatically only appeal will lie as per Order 43 Rule 1(d) of CPC. But the appellate court has taken a novel stand that it is not a rejection order. Only rejection order can be entertained under Order 43 Rule 1(d) of CPC. Since it is a merit order, it does not lie.

7.The appellate court wants to give interpretation to the word 'rejection' in a different manner as if the rejection can be made only before numbering the petition and not after that. This is not the proper approach.

8.Even as per the judgment of the Hon'ble Supreme Court in ***The Koushik Mutually Aided Co-operative Housing Society Vs. Aameena Begam & another (CDJ 2024 SC 002)***, now the position is clarified. Against the dismissal of the petition filed under Order IX Rule 13 CPC, only appeal will lie and not the revision. This fixes the issue. Wrong interpretation given by the appellate court *per se* illegal. On that sole ground, the order passed by the appellate court.



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9.In the result, this civil revision petition is **allowed**. The orders passed by the appellate court and the trial court are set aside. The matter is remitted back to the appellate court to consider CMA No.2 of 2021 on its own merit by giving opportunity to both sides. The above said process will be completed within a period of two months. No costs. Consequently, connected Miscellaneous Petition is closed.

11/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Additional District Munsif-cum-Judicial Magistrate,
Sivagiri.
- 2.The Sub Court,
Sankarankovil.



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G.ILANGOVAN, J

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