



C.R.P(MD)No.2430 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.R.P(MD)No. 2430 of 2023

and

C.M.P(MD)No.12610 of 2023

R.Sathishkumar

...Petitioner

Vs.

- 1.Thangammal
- 2.Subramani
- 3.Perumal
- 4.Arukani Ammal
- 5.Lakshmi
- 6.Valarmathi
- 7.Jeganathan
- 8.Ramesh
- 9.Thangavel
- 10.Arunraj
- 11.Kalpana
- 12.(Minor) Bhavanitha
- 13.Kannan



C.R.P(MD)No.2430 of 2023

14.Sadayammal

15.Palaniammal

16.Gomathi

....Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 24.06.2023 made in I.A.No.2 of 2021 in A.S.No.13 of 2018 on the file of the Principal District Court, Karur.

For Petitioner : Mr. K.Prabhakar

For R1 : Mr. K.Suresh

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 24.06.2023 made in I.A.No.2 of 2021 in A.S.No.13 of 2018 on the file of the Principal District Court, Karur.

2. The suit in O.S.No.34 of 2010 is filed by one Thangammal against several persons. One among them is the revision petitioner namely Sathish Kumar. He was aged about 16 years at the time of



C.R.P(MD)No.2430 of 2023

WEB COPY

filing the plaint. He was represented by his mother Palaniammal.

He is also arrayed as 16th defendant in the suit. After full trial, judgment was passed granting decree of partition. The mother of this revision petitioner remained absent. She was set *ex parte*. Along with her, this revision petitioner was also set *ex parte*.

3. Against the judgment and decree, an appeal was preferred by the second defendant namely Subramani before the District Judge, Karur. Later this revision petitioner became major and filed the petition seeking permission of the Court to file the written statement with the following averments: The mother namely Palaniammal did not prosecute the matter properly. She remained *ex parte* already. The Court ought to have taken the minority of the petitioner and would have appointed a Court guardian. But without appointing a Court guardian, a decree was passed on 21.12.2017. He has become major during the pendency of the suit. Pendency of the suit was not brought to his notice. After receiving notice from the appellate Court, he came to know about the decree. He become



C.R.P(MD)No.2430 of 2023

WEB COPY

major on 17.11.2015 but no steps were taken by the plaintiff to serve notice upon him. So he filed a suit in O.S.No.664 of 2018 before the Subordinate Court, Karur. Now it is stated to be pending. To bring out the factual aspects, now he filed a petition seeking the permission of this Court to file his written statement.

4. That was resisted by the respondent. The appellate Court dismissed the petition by the impugned order observing that after several steps taken in the appeal, with the delay of 1-1/2 years, the petition is filed. The revision petitioner was impleaded before the trial Court only as the legal heir of the fifth defendant. So apart from the ground taken by the fifth defendant, no independent ground can be taken by this revision petitioner. On that account, it was dismissed. Against which this revision is preferred.

5. Heard both sides.

6. The narration in the preamble portion does indicate that this revision petitioner was not properly represented by his mother. He



C.R.P(MD)No.2430 of 2023

WEB COPY

became major. That was also not brought to the notice of the Court.

The mother remained *ex parte*. Consequently, this petitioner was also set *ex parte* which is *per se*, not proper. The trial Court ought to have appointed Court guardian for this petitioner. That was not done. So the decree that was passed *per se* is not binding upon him. Challenging the above said decree, he filed a suit in O.S.No.664 of 2018, before the Subordinate Court, Karur, which is now stated to be pending. Now he wants to file written statement.

7. Learned counsel for the respondent would rely upon the following judgments: i) in ***C.R.P.No.1102 of 1977*** in the case of ***Saradamani Vs. Rajendran, minor by next friend and mother, Thulasiammal***, and ii) in ***S.A.No.358 of 1924*** in the case of ***Lanka Sanyasi Vs. Lanka Yerran Naidu (dead) and others***.

8. According to the respondent herein, the petitioner cannot brought on records; the facts which are set out in the suit filed by the revision petitioner in O.S.No.664 of 2018, is not relevant and not



C.R.P(MD)No.2430 of 2023

permissible also.

WEB COPY

But the finding of the appellate Court that independent of the stand taken by the fifth defendant, no separate or additional ground can be raised by the revision petitioner is perfectly not in accordance with law. When a minor is brought on record, after attaining majority, he can take independent defence that are available to him, without relying upon the statement filed by the guardian. Such independent right cannot be curtailed by the Court. On that account, the finding of the appellate Court is not proper and it got to be set aside.

9. The judgments relied upon by the respondent, are speaking about the validity of the decree. It is now under dispute in O.S.No. 664 of 2018.

10. With regard to delay, now appeal stated to be pending as per the information submitted to the Court, he was transposed as one



C.R.P(MD)No.2430 of 2023

WEB COPY

of the appellant. Since the contention on the part of the respondent is that the ground taken in the suit cannot be brought on record, it is also out of place and cannot be taken into consideration. What are all the defence that are available to the revision petitioner, he is entitled to take. On the sole ground, the order passed by the Principal District Court, Karur, in I.A.No.2 of 2021 in A.S.No.13 of 2018, dated 24.06.2023 is set aside. The statement to be filed by the revision petitioner is ordered to be received on record.

11. With the above observation, this Civil Revision Petition is Allowed. No costs. Consequently, connected miscellaneous petition stands closed.

21.03.2024

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

pnn



C.R.P(MD)No.2430 of 2023

G. ILANGO VAN, J.

pnn

To

- 1.The Principal District Court, Karur.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

C.R.P(MD)No. 2430 of 2023
and
C.M.P(MD)No.12610 of 2023



WEB COPY



C.R.P(MD)No.2430 of 2023

21.03.2024