



C.R.P.(MD)No.3383 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.3383 of 2023
and C.M.P.(MD).No.17491 of 2023

1.Lavanya Gladis Metilda

2.Minor Abhiya Sheran ... Petitioners/Respondents/Plaintiffs

(Minor represented through his mother and guardian 1st petitioner)

Vs.

1.Marsalin Aunto

2.Paulina Angel ... Respondents/Petitioners/Defendants

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 28.07.2023 passed in I.A.No.4 of 2023 in O.S.No.81 of 2021 on the file of the Additional District Judge, Karur.

For Petitioner : Mr.S.Kadarkarairaj

For Respondents : Mr.I.Romeo Roy Alfred for R1 & R2

ORDER

Challenging the fair and decreetal order dated 28.07.2023 passed in I.A.No.4 of 2023 in O.S.No.81 of 2021 on the file of the Additional



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District Judge, Karur, this revision has been preferred.

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2.Suit in O.S.No.81 of 2020 was filed by the plaintiff herein seeking the relief of partition and consequential other reliefs. In the suit, the defendants namely 1 and 2 remained exparte. So they filed a petition to set aside the exparte decree in I.A.No.2 of 2023. That was allowed stating that these persons are necessary parties to the suit, since it is filed for partition. Challenging the above said order, this revision has been preferred.

3.A simple point arising for consider is that originally the defendants were set exparte on 15.12.2022 and the exparte order was passed. Thereafter, they filed I.A.No.3 of 2023 to set aside the exparte order. It was allowed on payment of cost. The cost was not paid. Citing the reason that they could not find out the Advocate on record and later he also failed to accept the cost. They filed the present impugned petition. That came to be allowed by the trial Court as stated above.

4.Legality of this order is called in question now. No doubt that



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there is a mistake committed by the trial Court in entertaining the present petition. The respondent ought to have filed proper application seeking extension of time citing their inability to pay the cost in time. But without resorting the same, they filed the application to set aside the exparte decree itself. When the exparte set aside order was still in force and not set aside, directly setting aside the decree is totally improper.

5. On that sole ground the above said order is liable to be set aside and accordingly, set aside and the matter is remanded back to the trial Court. The trial Court shall dispose of the same on its own merits in the light of the above said development. Let the above said process be completed within a month from the date of receipt of a copy of this order.

6. With the above said directions, this civil revision petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

21.02.2024

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



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To

- 1.The Additional District Judge, Karur.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN,J.

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