



CRP(MD).No.3357 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2024

CORAM :

THE HON'BLE MR JUSTICE G.ILANGOVAN

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1.Vagulayan
2.Mangaiyarkarasi
3.Pappathi
4.Mariammal Maheswari
5.Mariammal
6. Pappathi
7.Rajeswari
8.Karthikeyan
9.Saravanan
10.Valarmathi

Petitioners

Vs.

1.Pandeeswari
2.Gomathi
3.Selvamani

Respondents

PRAYER : Petition filed under Section 115 CPC against the order made in I.A.No.4 of 2022 in O.S.No.342 of 2020, dated 18.10.2023 on the file of the Additional District Judge, Dindigul.

For Petitioner : Mr.M.Ganesan

For respondents 1 and 2 : No appearance

For 3rd respondent : Mr.G. Gomathi Sankar



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ORDER

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This Court by order, dated 02.02.2024 passed the following conditional order, which reads as follows:

This civil revision petition has been filed against the order dated 18.10.2023 made in I.A.No.4 of 2022 in O.S.No.342 of 2020 on the file of the Additional District Judge, Dindigul and set aside the same.

2.The facts in brief:

Suit in O.S.No.342 of 2020 was filed by the respondents herein seeking the relief of partition and separate possession of 1/4th share and for cost. The defendants entered their appearance through Advocate. Thereafter, because of non filing of the written statement, exparte order was passed on 09.03.2022. Later the suit was decreed on 08.04.2022.

3.Seeking order setting aside the exparte decree I.A.No.3 of 2022 was filed by the 27th defendant on behalf of the defendants 24 to 31, under Section 5 of the Limitation Act on the following grounds. They appeared through advocate. But the second defendant who sold the property to these defendants promised that he would take care of the court proceedings on their behalf also. Mr.Ravishankar, learned counsel, who was appearing for the parties died. But the second respondent failed to pursue the matter thereafter. So because of the lapse committed by the second respondent only they were unable to appear before the trial Court and file the written statement. The above said fact came to their



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knowledge belatedly.

4. So far as these petitioners are concerned they filed I.A.No.4 of 2022 stating that there was a panchayat between the plaintiff and themselves. In that panchayat, the plaintiffs agreed to withdraw the suit. So they did not engage any advocate to file the written statement. Because of that there is a delay of 192 days in filing the petition to set aside the ex parte decree.

5. Both petitions were heard together and common order was passed by the trial Court. By which, I.A.No.3 of 2022 was allowed on payment of costs stating that within the time limit that petition was filed and since they are the purchasers of the property, their interest must be addressed.

6. So far I.A.No.4 of 2022 is concerned, it was observed that contradictory reasons have been stated by the petitioners. They were stated that ill health is the reason for their non appearance. At the same time, they have stated that because of the panchayat that took place between themselves and the plaintiffs, they did not appear. The date of knowledge was also not mentioned. On that ground the petition filed by these revision petitioners was dismissed.

7. Challenging the above said order of dismissal, this revision has been preferred by the petitioners stating that while some of the defendants' application has been entertained without any proper and valid reason, their request was rejected. But, reading of the order passed by the trial Court shows that contradictory statements were given by these petitioners to explain the reason for non



appearance. So that portion of the observation cannot be found fault. But, in a suit, which is filed for partition, when the petitioners claiming title over the entire property by virtue of settlement, I am of the considered view that the petitioner may be given opportunity to contest the matter, of course on payment of cost. The inconvenience caused by the defendants can be compensated by way of cost. If the petition is dismissed, then their valuable right will be affected. Since the suit is restored to the file in pursuance of the order passed in I.A.No.3 of 2022 by the trial Court, I am of the considered view that this petitioner also can be allowed on payment of cost.

*8.Accordingly, there shall be a direction to the petitioners to pay a sum of Rs.5,000/- (Rupees Five Thousand only) as cost to the respondents within a period of **fifteen** days.*

*9.List the matter for reporting compliance on **19.02.2024.**"*

2. Today, when the matter was taken up for hearing, the learned counsel appearing on either side submitted that the petitioners have complied the order passed by this Court, dated 02.02.2024 and the petitioners counsel has also produced a receipt for the same.

3. In view of same, the Civil Revision Petition is allowed by setting aside the passed in I.A.No.4 of 2022 in O.S.No.342 of 2020,



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dated 18.10.2023 on the file of the Additional District Judge, Dindigul.

No costs.

20.02.2024

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order
trp

To

The Additional District Judge, Dindigul.



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G.ILANGOVA,J.

Trp

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