



CRP NPD.Nos.799 & 800 of 2020

**THE HIGH COURT OF JUDICATURE AT MADRAS**

WEB COPY

**Date : 15.07.2025**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR**

**CRP [NPD] Nos.799 & 800 of 2020 &**

**CMP.Nos.4304 & 5740 of 2020**

Nagamani

. . . Petitioner in both CRPs

**Versus**

Kotteeswari

. . . Respondent in both CRPs

**COMMON PRAYER :** Petitions filed under Order 227 of Constitution of India to set aside the fair and decreetal Order dated 08.11.2019 passed in I.A.No.24 of 2019 in I.A.No.1003 of 2017 in I.A.No.538 of 2013 in O.S.No.67 of 2005 and in IA.No.1003 of 2017 in I.A.No.538 of 2013 in O.S.No.67 of 2005 respectively, on the file of the Principal Subordinate Court, Kanchipuram.

For petitioner : Mr.S.L.Sudarsanam

For respondent : Mr.A.Ilayaperumal



CRP NPD.Nos.799 & 800 of 2020

## **COMMON ORDER**

WEB COPY

The Civil Revision Petition in CRP.No.799 of 2020 has been filed challenging the Order of the trial Court dismissing the application filed by the petitioner to stay all further proceedings in I.A.No.43 of 2012 till the disposal of the application filed to restore the application filed in I.A.No.1003 of 2017 in the final decree application.

2. The Civil Revision Petition in CRP.No.800 of 2020 has been filed challenging the Order passed by the trial Court in dismissing the application filed to review the Order passed in I.A.No.538 of 2018 which was closed on 17.06.2017.

3. The following brief facts are necessary for disposal of the case :

One Kotteeswari filed the suit in O.S.No.67 of 2005 against her mother, brothers and legal heirs of her deceased brother for partition in respect of the properties left by her father, who is said to have died intestate. The said suit has been hotly contested by the other defendants, when the revision petitioner



CRP NPD.Nos.799 & 800 of 2020

WEB COPY

had remained exparte. The suit has been decreed on 16.03.2011 and a preliminary decree has been passed for partition. No challenge has been made to the said decree and judgment. Thereafter, an application has been taken out for passing of final decree by the decree holder. At this stage, an application has been taken out by the revision petitioner to set aside the exparte decree passed against him in I.A.No.538 of 2013. The said application, according to the petitioner, was originally allowed by the trial Court as per the docket Order. However, the trial Court, subsequently closed that application by an Order dated 17.06.2017. Therefore, he had filed an application to review the said Order. As that application has been dismissed, challenging the same the present revision petitions have been filed.

4. The main contention of the revision petitioner is that he had taken out an application under Order 9 Rule 13 on the ground that no summons have been served on him in the suit. Therefore, he should be given an opportunity to contest to suit. It is relevant to note that the suit has been hotly contested by the legal heirs of the brother of the revision petitioner. Therefore, the



CRP NPD.Nos.799 & 800 of 2020

WEB COPY

contention of the petitioner that summons have not been served on the revision petitioner cannot be countenanced. The suit itself has been filed under Order 33 of Code of Civil Procedure as an indigent person. When enquiry was conducted by the trial to find out whether the plaintiff was an indigent person or not, proper summons have been served to the respondents. That application has been contested by the respondents including the revision petitioner. Thereafter, this Court permitted the applicant therein to file the suit as an indigent person. In the above application, the petitioner has engaged a counsel one Mr.K.Varathan and he has filed vakalat on behalf of the revision petitioner. After the suit has been numbered, the petitioner was set exparte for non filing of the written statement on 26.10.2006. Therefore, the very contention of the petitioner that no summons have not been served to the parties, particularly, the revision petitioner, in view of this Court, cannot be countenanced.

5. Further it is relevant to note that admittedly, the revision petitioner had knowledge of the proceedings under which the suit has been filed. In



CRP NPD.Nos.799 & 800 of 2020

WEB COPY

such view of the mater, even assuming that separate summons have not been served after the suit has been numbered, that cannot be a ground to set aside the exparte decree, since he had already been served summons in the proceedings when an application has been filed as an indigent person. The explanation to Order IX Rule 12 also makes it clear that the Court shall not set aside the exparte decree merely on the ground that there has been irregularity in service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim. The nature of the suit also cannot be ignored altogether. All his brothers were hotly defending the so called partition deed in favour of the respective parties in the suit. Such being the position, it cannot be said by the revision petitioner that he has no notice of the proceedings where the very allotment made in his favour has been challenged. Therefore, the contention that the application ought not to have been dismissed cannot be countenanced.

6. Further, it is also relevant to note that though it is recorded as if the application in I.A.No.538 of 2013 has been allowed on 19.12.2016, the same



CRP NPD.Nos.799 & 800 of 2020

has been clarified on 17.06.2017, to the effect that as the suit in O.S.No.67 of 2005 has been decided on merits and it is only mistake on the concerned judge who made such endorsement and set right that mistake and the mistake has been rectified and thereby, closed the application in I.A.No.538 of 2013. No doubt a detailed Order ought to have been passed by the trial Court. But the fact remains that the very ground on which the exparte decree sought to be set aside itself found to be false.

7. In such view of the matter, though there is no detailed Order passed by the trial Court while closing the application in I.A.No.538 of 2013, in the given facts and circumstances of the case, that will not have any effect in procedural rights of any of the parties. The suit has been decided on merits and issues have been framed with regard to the partition deed entered between the defendants and their father. The trial Court has rightly admitted that the registered partition deed is not acted upon and the same is not valid in the eye of law and that decree has not been challenged by any one. Such being the position after passage of long period, the decree and judgment cannot be



CRP NPD.Nos.799 & 800 of 2020

challenged by the revision petitioner on technical grounds, which was passed after full contest, after lapse of many years. Hence, I do not find any merits in these revision petitions.

8. Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**15.07.2025**

Index : Yes / No  
Internet: Yes  
Speaking/non speaking order

vrc

To,

The Subordinate Judge,  
Kanchipuram.



WEB COPY



CRP NPD.Nos.799 & 800 of 2020

**N. SATHISH KUMAR, J.**

vrc

**CRP NPD Nos.799 & 800 of 2020**

**15.07.2025**