



C.R.P.No.649 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2025

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

C.R.P.No.649 of 2023 and CMP No.5100 of 2023

Vellingiri

.... Petitioner

Vs

1.Ponnusamy

2.Gurusamy

... Respondents

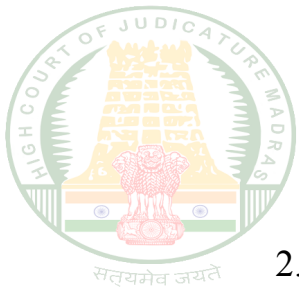
Revision filed under Section 115 of Civil Procedure Code against the fair and decretal order dated 19.01.2023 passed in I.A.No.1 of 2019 in O.S.No.1408 of 2014 on the file of I Additional District Munsif Judge, Coimbatore.

For Petitioner: Mr.K.Myilsamy

For Respondents: Mr.P.Saravana Sowmiyan

ORDER

The revision petitioner is the first defendant in O.S.No.1408 of 2014, aggrieved by the order of dismissal of I.A.No.1 of 2019 refusing to condone the delay of 471 days in filing an application to set aside the exparte decree in O.S.No.1408 of 2014.



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2. Mr.K.Myilsamy, learned counsel for the petitioner states that originally the suit was filed before District Munsif Court, Avinashi, where the revision petitioner has entered appearance and also engaged a counsel, however, the petitioner/first defendant was set exparte and therefore, he has taken out an application to set aside the exparte order. At that stage, in view of the bifurcation of the districts, the suit came to be transferred to I Additional District Munsif Court, Coimbatore .

3. It is the contention of the learned counsel for the petitioner that the petitioner/first defendant never received any notice from the transferee Court and he did not appear before I Additional District Munsif Court, Coimbatore and therefore the petitioner was not aware of the further proceedings taken before the I Additional District Munsif Court, Coimbatore. Learned counsel further states that though the suit is for partition, the petitioner claims absolute right to the entire suit property under a registered Settlement Deed executed in his favour. Therefore, learned counsel for the revision petitioner prays for revision being allowed and an opportunity being given to the revision petitioner/first defendant to contest the suit.



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4. Per contra, learned counsel for the respondents/plaintiffs would submit that the revision petitioner/first defendant had appeared before the I Additional District Munsif Court at Coimbatore and he was fully aware of the proceedings. Therefore, learned counsel for the respondents/plaintiffs submit that there is no infirmity or perversity in the findings rendered by the trial Court warranting interference by this Court.

5. I have considered the submissions made by the learned counsel on either side and also gone through the order passed by the learned I Additional District Munsif Court, Coimbatore. It is seen that subsequent to the transfer of the suit in O.S.No.1408 of 2014 to I Additional District Munsif Court, Coimbatore from District Munsif Court, Avinashi, the plaintiffs' counsel has made an endorsement that the plaintiffs have no objection for the exparte order being set aside and based on the said endorsement, the I Additional District Munsif, Coimbatore has also allowed I.A.No.1 of 2019 filed under Order IX Rule 7 of Civil Procedure Code and thereafter, the suit was posted for further hearing. However, since there was no representation for the revision petitioner/first defendant, he was set exparte and it is the case of the revision petitioner that only when final decree proceedings were



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initiated and only at the time of receiving the notice, the revision petitioner came to know about the transfer of the suit in O.S.No.1408 of 2014 to the file of I Additional District Munsif Court, Coimbatore and also about the exparte order.

6. I have also gone through the Docket Order in I.A.No.1155 of 2012 passed by District Munsif, Avinashi. The application in I.A.No.1155 of 2012 for setting aside the exparte order was filed when the suit was pending before the District Munsif Court, Avinashi. The suit in O.S.No.1408 of 2014 was transferred to District Munsif Court, Coimbatore vide order dated 31.07.2012 in ROC No.31112008/g/JUDL/dated 27.04.2012. Thereafter, I find that the application has been posed to 28.11.2014 for filing counter and on 16.04.2015, in view of the endorsement made by the plaintiffs, the application filed under Order IX Rule VII of Civil Procedure Code, came to be allowed.

7. I do not find any reference in the order as to the appearance of the revision petitioner through counsel after the suit in O.S.No.1408 of 2014 was transferred to District Munsif Court, Coimbatore. Therefore, I am satisfied



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with the explanation offered by the revision petitioner/first defendant that he had no notice of the transfer of the suit to I Additional District Munsif Court, Coimbatore and also the application filed under Order IX Rule 7 of Civil Procedure Code being allowed in view of the endorsement made by the plaintiffs. More so, in view of the defence raised by the revision petitioner/first defendant in the suit for partition claiming absolute right in the suit property, I am inclined to allow the revision in order to give a fair opportunity to the revision petitioner/first defendant to contest the suit for partition.

8. However, considering the loss of time in view of pendency of the revision and also the belated approach made by the revision petitioner/first defendant, with the consent of both the counsel, the application filed under Order IX Rule 7 is also taken up by this Court suo-motu and it is ordered to facilitate the parties to directly go to trial.

P.B.BALAJI,,J

sr



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9. With the above observation, the civil revision petition is allowed and the order passed in I.A.No.1 of 2019 dated 19.01.2023 is set aside. The learned I Additional District Munsif, Coimbatore shall frame issues within a period of one week from the date of receipt of a copy of this order and shall dispose of the suit in O.S.No.1408 of 2014 on merits and in accordance with law on or before 31.01.2026.

No costs. Consequently, connected miscellaneous petition is closed.

01.09.2025

Index: Yes/No
Website:yes/no
Speaking Order/Non-speaking Order
sr

To

The I Additional District Munsif Court, Coimbatore

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