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C.R.P.No.1385 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1385 of 2022

Minor Logesh
rep. by his mother
Mageshwari

.. Petitioner

Versus

Kumar (Died)

1.Balammal
2.Ramaswamy

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and final order dated 07.09.2021 passed by the Additional District Munsif, Gingee, made in I.A.No.365 of 2021 in O.S.No.212 of 2014.

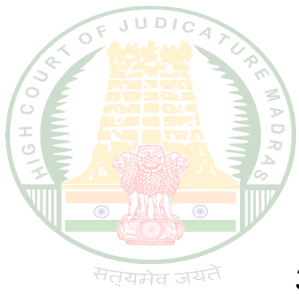
For Petitioner : Mr.B.Jawahar

For Respondents : Mr.E.Sathiyaraj

ORDER

Heard Mr.B.Jawahar for the petitioner and Mr.E.Sathiyaraj for the respondents.

2. For the sake of convenience, the parties will be referred to as per their ranks in the suit.



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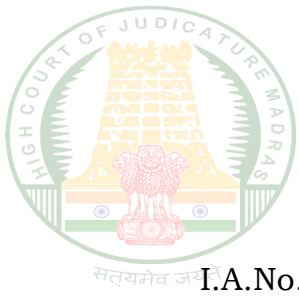
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3. The plaintiff is the civil revision petitioner. The plaintiff assails the order passed by the learned Additional District Munsif, Gingee in I.A.No.365 of 2021 in O.S.No.212 of 2014 dated 07.09.2021.

4. The plaintiff presented O.S.No.212 of 2014 seeking for declaration and permanent injunction. The plaintiff is the son of the first defendant. The first defendant had obtained the suit schedule mentioned property by virtue of a settlement deed executed by his grandmother in his favour. In turn, the first defendant had executed a settlement deed in favour of the plaintiff on 27.04.2012. As the defendant attempted to interfere with his possession, he came forth with the aforesaid suit.

5. Summons were served on the defendants. The third defendant alone filed a written statement disputing the settlement deed that had been executed by the first defendant in favour of the plaintiff. The second defendant had remained *exparte*.

6. As the pleadings were completed with the filing of the written statement by the third defendant, the parties went for trial. The plaintiff entered the witness box and his guardian, namely, his mother was examined as PW1. She was cross examined by the third defendant's counsel. Thereafter, the second defendant filed an application to set aside the *exparte* order that she suffered. This was received in



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I.A.No.1189 of 2019. The said application came to be allowed on 30.03.2021. Thereafter, the second defendant filed a written statement more or less on the same lines as the third defendant, but with an addition relating to a document dated 17.03.2014.

7. On service of the written statement filed by the second defendant, the plaintiff took out an application for filing a reply statement invoking Order VIII Rule 9 of the Code of Civil Procedure. Learned District Munsif numbered the application as I.A.No.365 of 2021. She issued notice to the defendants.

8. The defendants pointed out that the additional statement is sought to be filed with a delay of nearly 1 year and three months and hence, the same is belated. They also pointed out that the settlement deed dated 27.04.2012 had been cancelled on 01.08.2013 and another settlement deed had been executed on 17.03.2014. They pleaded that the replication, that had been filed by the plaintiff, is unnecessary and the same may be dismissed.

9. The learned Trial Judge agreed with the defendants and dismissed the application and hence, the revision.



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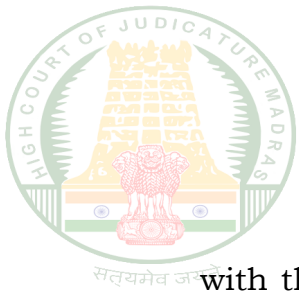
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10. I have carefully gone through the records and have applied my mind to the facts of the case.

11. It is not in dispute that the second defendant had been set *exparte* in the suit. It is also not in dispute that the *exparte* order was set aside and the written statement filed by the second defendant was taken on file on 30.03.2021. Soon after the written statement had been filed, the plaintiff had filed the application to receive his reply statement. When the plaintiff entered the witness box and deposed as PW1, the written statement of the second defendant was not filed.

12. The line of cross examination of the second defendant would more or less be based on the written statement filed by her. The plaintiff feels that certain averments made by the second defendant, which had not been taken by the third defendant necessarily, has to be denied. Hence, the plaintiff has filed an application for receiving the additional pleadings.

13. At the state of filing of an application under Order VIII Rule 9, the court is not concerned with the merits of the pleadings. Order VIII Rule 9 is not as strict as Order VI Rule 17, which has a proviso appended to it, and because an application under Order VIII Rule 9 can be filed



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with the “leave of the court”. This leave should not be strictly construed but requires liberal interpretation. The plaintiff would not have an opportunity to deny the pleading filed by the second defendant as the second defendant did not choose to participate in the proceedings, till the cross examination of the plaintiff by the third defendant was completed. That being the position, the court below ought to have permitted the plaintiff to file a replication to the written statement filed by the second defendant.

14. Delay too, is not considerable. A perusal of the records filed along with this revision shows that it is presented soon after the written statement was filed by the second defendant. That being the position, I am not able to sustain the order impugned in this revision. The civil revision petition is allowed.

15. This revision stands allowed. The order of the learned Additional District Munsif, Gingee in I.A.No.365 of 2021 in O.S.No.212 of 2014 dated 07.09.2021 is set aside. The reply statement filed by the plaintiff will be received. The learned Additional District Munsif is requested to take into consideration that the suit is of the year 2014 and give all the necessary attention that a suit, which is pending for more than 8 years requires, and dispose of the suit at the earliest. No costs.



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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To

1.The Additional District Munsif, Gingee



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V.LAKSHMINARAYANAN, J.

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