



Crp.No.129 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2025

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.129 of 2025

C.M.P.No.988 of 2025

Kandasamy

...Petitioner

Vs.

Minor K.Saswath
Rep by her next friend/Mother
Shanmugapriya,
S/o.Karupannan,
D.No.5/171-7, N.G.G.O.Colony
Rajiv Gandhi Nagar,
Salem Road, Namakkal Taluk,
Namakkal District

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, pleaded to set aside the fair and decreetal order dated 25.10.2024 made in IA.No.3 of 2024 in OS.No.210 of 2019 on the file of the Additional Sub Court, Namakkal.

For Petitioner : Mr.R.Prabakar

ORDER

The second defendant is the revision petitioner before this Court challenging the order passed by the Additional Sub Court, Namakkal in I.A.No.3



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WEB COPY of 2024 in O.S.No.210 of 2019.

2.The brief facts which has culminated in the filing of the above Civil Revision Petition are herein below set out:-

The respondent had filed suit in O.S.No.210 of 2019 on the file of the Additional Sub Court, Namakkal seeking partition and separate possession and for injunction from alienation of the suit schedule property. The petitioner was arrayed as the second defendant in the said suit. The petitioner had entered appearance through counsel and the matter was being adjourned for the written statement. On 17.02.2020, since the written statement was not filed, the petitioner was set ex-parte. Therefore, the petitioner had filed I.A.No.3 of 2024 on 05.06.2024 seeking to set aside the ex-parte order passed against him on 17.02.2020. The said application was dismissed accepting the counter filed by the respondent that the application for setting aside the ex-parte has been filed after a delay and on the ground that no application for condoning the delay had been filed. The petition was dismissed also on the ground that the trial was in progress. Aggrieved by the same, the petitioner is before this Court.



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3.The respondent/plaintiff is represented as caveat.

4.Heard the learned counsels on either side.

5.The Hon'ble Supreme Court in its judgment as early as in the year 1955 in **AIR 1955 SC 425 Sangaram Singh Vs Election Tribunal, Kotah and others** had held that limitation would not apply to application filed under the provisions of Order 9 Rule 7 of the Code of Civil Procedure. The Hon'ble Supreme Court had set out the difference in the language of provisions of Order 9 Rule 7 and Order 9 Rule 13. The learned judge had held that where a person is set ex-parte and no ex-parte decree is passed, an application would lie under Order 9 Rule 7. It is a case where the relief claimed is not to set aside an Act of Court i.e passing of a decree but only seeks permission to put the clock back, so as to enable the defendant to defend the suit as if he was present at its earlier stages. In the case of an application filed under Order 9 Rule 13 the defendant who has suffered a decree passed by the Court seeks to set it aside. Therefore, Article 137 of the Limitation Act cannot be applied in the case of a petition filed under Order 9 Rule



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7. Therefore the order of the Court below dismissing the petitioner's application under Order 9 Rule 7 has to necessarily be set aside and accordingly set aside. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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ep

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

To

The Additional Sub Court, Namakkal.



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