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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.04.2025

CORAM

THE HON'BLE MR. JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.1086 of 2025

and

C.M.P(MD)No.5901 of 2025

Udayakumar

...Petitioner/Petitioner/2nd Defendant

Vs.

M.Palanichamy (Died)

- 1.S.Saraswathi
- 2.Malarselvi
- 3.Chandrapriya

...Respondents 1 to 3/Respondents 2 to 4/Plaintiffs

- 4.Radhalakshmi
- 5.Chandrakumar
- 6.Thiyagarajan
- 7.Gopalakrishnan
- 8.Arasammai
- 9.Balakrishnan

...Respondents 4 to 9/Respondents 5 to 10/
1,3 to 7 Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the Ex-order and fair order dated 12-02-2024, passed in I.A.No.2 of 2023, in O.S.No.4 of 2020, on the file of Sub Court, Melur, Madurai.



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For Petitioner : Mr.S.Sukumar

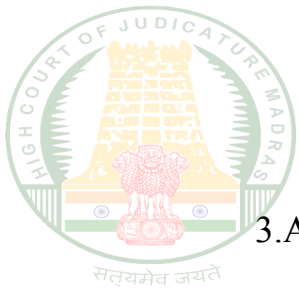
For Respondents : Mr.M.Mithun for R1 to R3
Mr.MU.Prakash for R8
Mr.M.Balakrishnan for R9

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ORDER

The second defendant in O.S.No.4 of 2020, on the file of the Sub Court, Melur, Madurai, has filed the present revision petition challenging the dismissal of his application filed under Order 9 Rule 7 of C.P.C.

2.A perusal of the records reveal that the suit has been filed for the relief for partition. The second defendant was set ex-parte on 12.01.2007. However, the suit itself was dismissed for default in the year 2010 and after a long time, a suit came to be restored in the year 2019. The present application has been filed by the defendant in I.A.No.2 of 2023, on 21.11.2023, under Order 9 Rule 7 of C.P.C. to set aside the ex-parte order. Along with the said application, the defendant has filed also his written statement. The trial Court has proceeded to dismiss the Order 9 Rule 7 of C.P.C. application on the ground that it has been filed much belatedly. Challenging the same, the present revision has been filed.

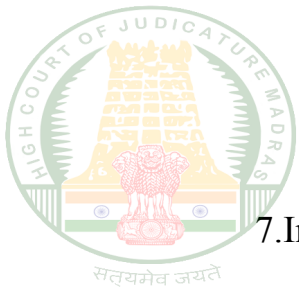


3. According to the learned Counsel appearing for the revision petitioner, the suit itself was not on the files of the Court between 2010 to 2019. Once it was restored, the application has been filed. So far, the trial has not yet begun and therefore, no prejudice would be caused to the plaintiffs.

4. Per contra, the learned Counsel appearing for the respondents/plaintiffs has contended that the other defendants in the suit are siblings and they are contesting the suit and therefore, the contention of the second defendant that he was not served with summon or he had no knowledge about the pendency of the suit is not actually correct.

5. I have considered the submissions made on either side and perused the materials available on record.

6. Considering the fact that suit itself was not on the files of the Court between 2010 and 2019, the delay on the part of the second defendant in filing an application under Order 9 Rule 7 of C.P.C. can very well be condoned. That apart, the trial is yet to begin. In such circumstances, the trial Court was not right in dismissing the said application.



7. In view of the above said deliberations, the order impugned in the revision petition is hereby set aside. The trial Court is directed to dispose of the suit on or before **31.12.2025**.

8. In the result, the Civil Revision Petition stands allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is also closed.

07.04.2025

Internet: Yes/No
Index: Yes/No
RJR

To

The learned Sub Judge,
Melur, Madurai.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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R.VIJAYAKUMAR, J.

RJR

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