



C.R.P.Nos.1491 and 1547 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.1491 and 1547 of 2023
and C.M.P.No.9876 of 2023

1.Zaibun Bi

2.Aziz Khan

3.Liakat Alikhan

... Petitioners (in both CRPs)

vs.

1.Badrunissa

2.Batul Bi

3.Dowlath Khan

... Respondents (in both CRPs)

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order dated 05.12.2022 passed in I.A.Nos.4 and 5 of 2022 in O.S.No.20 of 2010 on the file of the Principal District Judge, Villupuram.

For Petitioners : Mr.D.Baskar (in both CRPs)

For Respondents : Mr.D.Ravichander (in both CRPs)

COMMON ORDER

The Civil Revision Petition in C.R.P.No.1491 of 2023 is filed challenging the order passed by the Principal District Judge, Villupuram in I.A.No.4 of 2022 in O.S.No.20 of 2010, dated 05.12.2022 allowing the



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application filed by the petitioners seeking to set aside the *exparte* order passed against the petitioners. The petitioners are aggrieved by the direction issued by the Trial Court to participate in the trial from the stage in which it was pending on the date of allowing the application without permitting the petitioners to participate in the trial from the stage in which *exparte* order was passed against them.

2. The Civil Revision Petition in C.R.P.No.1547 of 2023 is filed challenging the order passed by the Principal District Judge, Villupuram in I.A.No.5 of 2022 in O.S.No.20 of 2010, dated 05.12.2022 dismissing the application filed by the petitioners seeking to recall of PW.1.

3. The respondents herein filed a suit against the petitioners and others seeking a preliminary decree for partition and separate possession in O.S.No.20 of 2010 on the file of the Principal District Judge, Villupuram. The said suit has been resisted by the petitioners by filing written statements. When the suit was posted for cross examination of PW.1, the petitioner was not present and therefore, they were set *exparte*. It was the specific case of the petitioners that the 1st petitioner/2nd defendant was not keeping good health on 14.06.2022, when the matter was posted for cross



examination of PW.1 and hence, she could not meet her counsel and give suitable instructions and therefore, the petitioners were set *exparte* on that day.

4. The petitioners filed applications in I.A.Nos.4 and 5 of 2022 seeking to set aside the *exparte* order passed against them on 14.06.2022 and to recall PW.1 for the purpose of cross examination. The Trial Court by impugned order allowed the application in I.A.No.4 of 2022 and set aside the *exparte* order. However, the Trial Court allowed the petitioners to participate in the trial from the stage in which it was standing on the date of allowing of the petition. The application in I.A.No.5 of 2022 seeking to recall of PW.1 was dismissed as petitioners were not permitted to participate from the stage in which the suit was standing on the date of setting them as *exparte*. Aggrieved by the said orders, the petitioners have come before this Court.

5. The learned counsel appearing for the petitioners would submit that on the relevant date, due to the illness of the 1st petitioner, who was in-charge of the legal proceedings, she could not contact the counsel and give suitable instructions for cross examination. The learned counsel further



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submitted that there is no much progress in the trial after examination of PW.1. Now, the plaintiffs side evidence was closed and the suit is posted for recording defendants side evidence. At this stage, the instant applications have been filed. Therefore, the Court below should have taken liberal view of the matter.

6. The learned counsel for the respondents would vehemently submit that the defendants in the suit were set *exparte* on 24.11.2021. Thereafter, the 6th defendant filed an application to recall PW.1 on 06.01.2022 and the same was allowed and he cross examined PW.1. Again, there was no representation for the petitioners and hence, they were set *exparte* on 14.06.2022. In such circumstances, the Trial Court was justified in passing the impugned order by not allowing the petitioners to participate from the stage in which the suit was pending on the date of setting them *exparte*.

7. It is seen from affidavit filed in support of this application only due to illness of the 1st petitioner, she could not contact the counsel and give suitable instructions for cross examination. Therefore, their counsel was not in a position to cross examine PW.1 on 14.06.2022. This application has been filed on 28.07.2022. After setting the petitioners as *exparte* on



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14.06.2022, the suit was posted for further cross examination of PW.1 and subsequently, the plaintiffs side evidence was closed on 23.08.2022 and the trial is posted for defendants side evidence.

8. Taking into consideration there is no much progress in the trial after setting the petitioners *ex parte* on 14.06.2022, this Court feels an opportunity shall be given to the petitioners to participate in the trial from the stage in which the trial was standing on the date setting them *ex parte*. Allowing the petitioners to participate in the trial from the stage in which the suit was standing would not cause any serious prejudice to the respondents in the absence of any substantial progress in the trial. Further, the suit is for partition. Therefore, the petitioners shall be given ample opportunity to cross examine the plaintiffs side witness PW.1.

9. In view of the same, this Court feels the impugned order passed by the Trial Court needs to be interfered with. However, taking into consideration the facts and circumstances of the case, this Court is inclined to impose a cost of Rs.10,000/- on the petitioners, as a condition for allowing the civil revision petitions.



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10. Accordingly, both the Civil Revision Petitions are allowed on condition that the petitioners shall pay a cost of Rs.10,000/- to the respondents within a period of four weeks from the date of receipt of copy of this order. The order passed in I.A.No.5 of 2022 is set aside and the prayer in the said application for recall of PW.1 stands allowed.

11. The order passed in I.A.No.4 of 2022 is modified as follows.

The direction of the Principal District Judge, Villupuram to allow the petitioners to participate in the suit from the stage in which it was standing on the date of impugned order is set aside and the petitioners are permitted to participate in the suit from the stage in which the suit was standing on the date of exparte order (i.e., 14.06.2022). No costs. Consequently, the connected civil miscellaneous petitions are closed.

17.02.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The Principal District Judge,
Villupuram.



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S.SOUNTHAR, J.

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