

**IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE, SALEM.**

**Present : Tmt. L. Kalaivani, B.A.,B.L.,  
III Additional District Judge,  
Salem.**

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**Tuesday, the 01<sup>st</sup> day of April 2025**

**I.A.No.2/2023  
in  
AS.No.49/2020**

R. Hemaram  
Rep. By Power of Attorney Holder Pakaram” ... Petitioner/Appellant  
/Vs/

1. K.J.Deepankumar  
2. Dhanasekaran  
3. Senthilkumar  
4. Nandakumar ... Respondents/Respondents

This petition is coming on 13.03.2025 before me for final hearing in the presence of Thiru.V.Ponmudi, learned counsel for the petitioner and Thiru.A.S.Anbu, learned counsel for the 2<sup>nd</sup> to 4<sup>th</sup> respondents and the appeal suit was dismissed as against the 1<sup>st</sup> respondent, upon hearing the arguments of both and having stood over for consideration till date, this court delivered the following:-

**ORDER**

This petition has been filed by the petitioner Under Order 41, Rule 19 and section 151 of CPC to restore the appeal which was dismissed as against the 1<sup>st</sup> respondent.

**1. Brief case of the petitioner is as follows:-**

The petitioner herein is the appellant in the appeal suit and the 1<sup>st</sup> respondent in the appeal has evaded to receive the summon before the trial

court and he was set exparte before the trial court. The 1<sup>st</sup> respondent and other respondents were colluded together and created the sale deed. The trial court has passed decree as against the 1<sup>st</sup> respondent alone and the suit was dismissed as against the other respondents. The 1<sup>st</sup> respondent has evaded to receive summon in the appeal suit also. Therefore, the petitioner has filed a memo on 09.11.2021 before this court and prayed to dispense with the summons to the 1<sup>st</sup> respondent and this court was recovered the memo. However, dismissed appeal suit as against the 1<sup>st</sup> respondent. In fact, the 1<sup>st</sup> respondent is the owner of the suit property and he has received Rs.5,00,000/- on 25.10.2012 from the petitioner and he also received Rs.2,00,000/- on 14.11.2012 based on the Bogia Agreement (lease agreement). While such being so, unless the 1<sup>st</sup> respondent is a party to the appeal, the petitioners will be put into loss and hardship. Hence, the petitioner has come-forward with the present petition seeking to restore the appeal which was dismissed as against the 1<sup>st</sup> respondent.

**2. Nutshell of the counter filed by the 4<sup>th</sup> respondent and adopted by 2<sup>nd</sup> and 3<sup>rd</sup> respondents is as follows:-**

The respondents have denied the averments stated in the petition except that those are specifically admitted by the respondents. The petitioner alone filed a memo on 09.11.2021 and based on that memo the appeal was dismissed as against the 1<sup>st</sup> respondent. The provision stated in the petition under order 41 rule 19 of CPC is not proper and maintainable. It is false to state that the 1<sup>st</sup> respondent and other respondents were colluded together and created the sale deed. There are no merits in this petition. Hence, it is prayed for dismissal.

**3. Now the point for consideration is:-**

Whether the petition filed by the petitioner is to be allowed or not is to be decided.

**4. Answer to the point**

This petition has been filed by the petitioner under order 41 rule 19 of CPC to restore the appeal suit which was dismissed as against the 1<sup>st</sup> respondent. The petitioner would contend that the 1<sup>st</sup> respondent was evaded to receive the summons in the appeal suit and thus, the petitioner has filed a memo on 09.11.2021 seeking to dispense with the summons. However, this court has dismissed the appeal suit against the 1<sup>st</sup> respondent. In fact, the decree was passed against the 1<sup>st</sup> respondent alone and thence, it is necessary to restore the appeal as against the 1<sup>st</sup> respondent. On the other hand, the 2<sup>nd</sup> to 4<sup>th</sup> respondents would contend that the appeal suit was dismissed as against the 1<sup>st</sup> respondent based on the memo filed by the petitioner and thus, he cannot ask the court to restore the appeal as against the 1<sup>st</sup> respondent.

5. Having regard to the rival submissions, it is noted that the present petition has been filed under order 41 rule 19 of CPC which relates to restore the appeal which was dismissed for non-appearance. In the case on hand, the appeal suit was dismissed based on the memo filed by the petitioner. Therefore, invoking provision under order 41 rule 19 of CPC by the petitioner is not wrong and even assuming that the provision under order 41 rule 19 of CPC would not apply to the present case, the wrong mentioning of provision is not a ground for dismissal. Therefore, the objection raised by the respondents that the provision noted by the petitioner is irrelevant to the claim is not acceptable.

6. Upon perusal of the records would make it clear that the appeal was dismissed as against the 1<sup>st</sup> respondent on 09.11.2021. It is further notice that

the petitioner has filed a memo before the court and seeking order for dispense with the summons to the 1<sup>st</sup> respondent. However, the appeal suit was dismissed by this court inadvertently as against the 1<sup>st</sup> respondent. It is pertinent to note that the suit was decreed as against the 1<sup>st</sup> respondent alone. While such being so, the reasons stated by the petitioner is convincing. On the same time there is a delay on the part of the petitioner in filing this petition and thus, sufferance caused to the respondents also taken in to consideration.

In the result, the petition is allowed subject to payment of cost of a sum of Rs.1500/- to the 2<sup>nd</sup> to 4<sup>th</sup> respondents on or before 21.04.2025, failing which the petition will be dismissed.

Dictated to the Steno-typist typed by her directly, corrected and pronounced by me in the open court, this the 01<sup>st</sup> day of April 2025.

(Sd/-L.Kalaivani)  
III Additional District Judge,  
Salem.

Fair/Draft Order in  
IA.No.2/2023 in  
AS.No.49/2020  
Dt. 01.04.2025  
III ADJ., Salem.