



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WEB COPY

CRP(PD) (MD) Nos. 613 and 614 of 2017

and

CMP(MD) No. 2769 of 2017

in

CRP(MD) No. 613 of 2017

B.Sugandhi

... Petitioner in both CRPs

vs.

- 1) S. Deepa
- 2) K. Shanmugam Chettiar
- 3) K. S. Muthukumar
K. M. Balakrishnan Chettiar (Died)
- 4) S. Usharani
- 5) M. Sahunthala
- 6) K. M. Nambirajan
- 7) K. M. Maheswaran
- 8) M. Gowri
- 9) R. Sandhi
- 10) V. Kalaivani
- 11) T. Shanmugam
- 12) Jeyaprasakash
- 13) S. Rugmani
- 14) D. Basheera
- 15) D. Taj
- 16) J. Krishnakumari
- 17) B. Sundari
- 18) B. Karthick
- 19) S. Ashok Kumar
- 20) S. Prabhu

... Respondents in both CRPs

Petitions filed under Article 227 of Constitution of India, against the fair and decreetal order dated 01.09.2016 passed in I.A.Nos.78 and 79 of 2016 in O.S.No.3 of 2008 on the file of Additional District Court, Dindigul.

For Petitioner : Mr.M.P.Senthil

COMMON ORDER

These revision petitions are against the orders of the Trial Court allowing the interlocutory applications to bring on record the legal representatives of the deceased 4th defendant and to set aside the abatement.



2.The learned counsel for the revision petitioner submitted that the application to bring on record the legal representatives of the deceased 4th respondent, was filed after enormous delay of two years and three months without even the application to condone the delay and therefore, the order of the Trial Court in allowing the applications is patently error and against the statute.

3.The learned counsel for the revision petitioner also referred to Order 22 Rule 9(2) and its Explanation and submitted that the application to bring the legal representatives on record without filing an application to condone delay, is erroneous and without jurisdiction.

4.The second limb of the submission of the learned counsel for the revision petitioner is that even assuming the Limitation Act does not apply for the application filed under Order 22 Rule 4, there must be a sufficient cause explaining the delay.

5.This Court has given anxious consideration to the submissions made by the learned counsel for the revision petitioner.

6.Explanation to Order 22 Rule 9(2) is applicable only in case of abatement or dismissal due to the death of plaintiff. It confines only to the plaintiff or the person claiming to be the legal representatives of the deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff and it does not cover the defendant in a suit who dies pending suit. Further, by impleading the legal representatives of the deceased 4th defendant, no prejudice is going to be caused to the revision petitioner, who claims right and share in her father's property which nevertheless will be a fixed one and her ratio will neither be diminished nor increased by the death of the 4th defendant, who is one of the sharers. Therefore, by allowing the application to implead the legal representatives of the deceased 4th respondent, no prejudice is going to be caused to the revision petitioner. In fact, it would pave way for complete adjudication in the suit for partition. Hence, this Court finds no error in the impugned orders of the Trial Court.

Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge,
Dindigul.

+1cc to Mr.M.P.Senthil,Advocate Sr.No.17204

NBI

VB/JC/06.04.2017/2P/3C

<https://hcservices.ecourts.gov.in/hcservices/>

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