



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2017

CORAM :

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) Nos.581 to 583 of 2017

- 1.Kunjarathammal (Died)
- 2.Ramayee
- 3.Boopathi
- 4.Shanmugakani
- 5.Chitradevi
- 6.Mukkooran
- 7.Lakshmanan
- 8.Senthuran
- 9.Rajendran

... Petitioners in all CRPs

(Petitioners 3 to 9 are brought on record as the Legal Representatives of the deceased 1st petitioner, vide court order dated 09.12.2016 made in CMP(MD) Nos.1210,1212 and 1214 of 2016)

vs.

- 1.Irulayee
- 2.Poomayil
- 3.Senthur Pandi
- 4.Sivagnana Pandian
- 5.Dakshinamurthy
- 6.Sethurani

... Respondents in all CRPs

Petitions filed the under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 13.02.2012 made in I.A.Nos.198, 410 and 690 of 2005 in O.S.No.313 of 1995 on the file of the learned District Munsif Court, Muthukulathur.

For Petitioner : Mr.S.Srinivasa Raghavan

For Respondents : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

COMMON ORDER

Heard the learned counsel for the revision petitioners and the respondents.

2.It is the suit for declaration of title and consequential injunction filed by the revision petitioners, but was dismissed for non-prosecution. Since the sole defendant died on 05.01.2001



and the plaintiffs failed to bring the legal representatives on record, on 21.02.2002, the Trial Court has rightly dismissed the suit for non-prosecution.

3. Thereafter, the plaintiffs have come out with an application to condone delay 930 days in filing the application to restore the suit as well as the equal number of delay in bringing the legal representatives on record and to set aside the abatement.

4. The Trial Court, after hearing both the parties, has dismissed the Section 5 application, on the ground that when there are two plaintiffs, even assuming that the first plaintiff was suffering from tuberculosis, nothing prevented the 2nd plaintiff from pursuing the suit. Furthermore, there is no sufficient cause shown by the plaintiffs to condone enormous delay of 930 days. Hence, the Trial Court has dismissed the Section 5 application as well as the other consequential interlocutory applications.

5. The learned counsel for the revision petitioners submitted that the suit property is under joint possession and enjoyment of the plaintiffs which they have inherited through their mother. The UDR patta was also issued in their favour. However, taking advantage of the position, the defendant who is the step brother to the 2nd plaintiff, is trying to interfere with the possession of the suit property.

6. Considering the nature of the dispute between the parties and their relationship, this Court is of the opinion that the right of the parties should be adjudicated by the competent Court and has to be settled through legal means. The dismissal of the suit for non-prosecution may not be appropriate.

7. Therefore, CRP.581/17 is allowed. Cost of Rs.10,000/- (Rupees Ten Thousand only) to the respondents shall be paid by the revision petitioners within 30 days. On such payment, the delay is condoned and the Court below shall take up the application filed under Order 9 Rule 9 and dispose it of as per law. In view of the disposal of CRP.581/17, CRP.582 & 583/17 are allowed and the order made in I.A.Nos.410 and 690 of 2005 is set aside. The Trial Court shall consider the merits of the applications afresh. No costs.

Sd/-
Assistant Registrar(Co)

/True copy/

Sub Assistant Registrar



To

The District Munsif Judge,
Muthukulathur.

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+1 cc to Mr.Sarvabhauman Associates , Advocate in SR.No. 16131
+3cc to Mr.S.Srinivasa Raghavan, Advocate in SR.No:16062 to 16064

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AE/KP/SAR4/13.04.2017/3P/6C

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