



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P.[MD]Nos.2610 to 2613 of 2017(NPD)

and

C.M.P.[MD]Nos.12032 of 2017 and 6837 to 6848 of 2018

WEB COPY

Shalugambal Beevi (died)

1.Abdul Raguman

Mohammed Yusub (Died)

2.Mohammed Aliyar

3.Bather Kasim

4.Meera Sahib

5.Shahul Hamed

6.Shajahan

7.Nabil

...Revision Petitioners 1 to 7/Proposed Plaintiffs
(LRS of the Decretal Plaintiff)

8.Rahima Beevi

9.Jassim Samsudeen

10.Abdul Jameel

11.Mohammed Hasil ...Revision Petitioners 8 to 11/Proposed

Plaintiffs (Legal heirs of deceased Mohammed Yusub)

[Cause title accepted vide Court order dated 21.12.2017 made in C.M.P.[MD]Nos.11867 to 11870/17 in C.R.P.[MD]SR.Nos.19741, 19743, 19745 and 19747/17]

Vs.

Vijayalakshmi (Died)

1.Seenivasan

2.Krishnan

3.Ragavan

4.Venkatesan

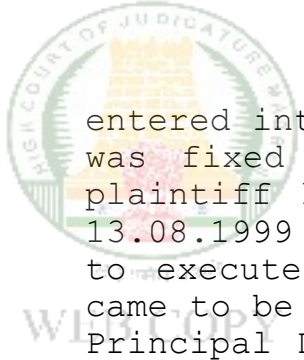
... Respondents /Respondents/Proposed
Defendants.

COMMON PRAYER: Civil Revision Petitions are filed under Section 115 of the Code of Civil Procedure, praying to set aside the orders dated 13.02.2017, 20.02.2017, 20.02.2017 and 24.03.2017 made in I.A.Nos.115 of 2008, 168 & 169 of 2016 and Un-numbered I.A of 2017 in O.S.No.56 of 2007, respectively, on the file of the Principal District Court, Tuticorin.

For Petitioners : Mr.K.Govindarajan
in all CRPs for Mr.S.Siva Thilakar
For Respondents : Mr.H.Arumugam
[In all CRPs.]

COMMON ORDER

One Shalugambal Beevi filed O.S.No.129 of 2003 on the file of Subordinate Court, Tuticorin against one Vijayalakshmi, seeking the relief of specific performance. The plaintiff and the defendant had



entered into a sale agreement on 03.06.1998. The sale consideration was fixed at Rs.26,00,000/- [Rupees Twenty Six Lakhs only]. The plaintiff had paid a sum of Rs.17,25,000/- on various dates from 13.08.1999 to 02.02.2001. Since the defendant did not come forward to execute the sale agreement for various reasons, the said suit came to be filed. Thereafter, it was transferred to the file of the Principal District Court, Tuticorin and re-numbered as O.S.No.56 of 2007.

2.The defendant Vijayalakshmi passed away on 21.12.2003 and the plaintiff Shalugambal Beevi passed away on 19.05.2008.

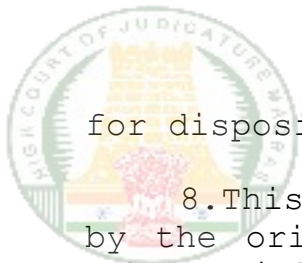
3.The original defendant Vijayalakshmi had filed her written statement in September 2003 itself. The Counsel who appeared on behalf of the defendant filed a memo in terms of Order XXII Rule 10-A on 07.02.2008.

4.The specific contention of the revision petitioner's Counsel is that the memo contained the factum of death alone and did not contain the details as regards the legal representatives. After gathering the details with regard to the legal representatives of the deceased defendant, the plaintiff filed I.A.No.115 of 2008 for condoning the delay of 1439 days in bringing the legal heirs on record. The said Interlocutory Application was dismissed by the learned Principal District Judge, Tuticorin by order dated 13.02.2017. Assailing the same, this Civil Revision Petition has been filed.

5.Since the plaintiff had also passed away in the meanwhile, the legal heirs of the plaintiff had come on record to prosecute this Civil Revision Petition. On the side of the legal heirs of the defendant, Mr.H.Arumugam, has originally filed a caveat petition in this Civil Revision Petition. The said caveat expired on 19.07.2017. The Civil Revision Petition itself came up for admission on 21.12.2017. But, it appears that in the meanwhile, the third respondent in the Civil Revision Petition namely, Ragavan, passed away on 15.10.2017. Therefore, Mr.H.Arumugam, learned Counsel who had filed caveat on behalf of all the four respondents in the Civil Revision Petition originally submitted that this Civil Revision Petition cannot be taken up and disposed of finally, unless the legal heirs of Ragavan are also brought on record.

6.Learned Counsel for the respondents had filed a memo on 16.07.2018 informing this Court that Ragavan passed away on 15.10.2017, leaving behind his wife namely, Prema, son R.Nandakumar and daughter R.Vijayalakshmi as his legal representatives.

7.This Court is of the view that since three out of four children of the original defendant Vijayalakshmi are very much present before this Court and since Mr.H.Arumugam, had earlier filed caveat for Ragavan also, there is a substantial representation of the deceased as of now. Therefore, there cannot be any impediment



for disposing of this Civil Revision Petition on merits.

8.This is a suit for specific performance. The suit was filed by the original plaintiff well within time. She had also paid a substantial portion of the sale consideration. In fact, receipt of Rs.17,25,000/- is admitted. That is why, the son of the original defendant Vijayalakshmi had deposited the said amount in a bank account. Therefore, this Court is of the view that this matter deserves to be given a disposal only on merits. It is not the case of the respondents that the memo indicating the death of Vijayalkshmi was served immediately after her death. In fact, it is seen that such a memo in terms of Order XXII Rule 10-A CPC was filed only on 07.02.2008. I.A.No.115 of 2008 came to be filed on 19.04.2008. This Court gives a finding that the plaintiff cannot be said to be guilty of laches. She has been diligently prosecuting her case.

9.Since the defendant has passed away, I.A.No.115 of 2008 has been filed for condoning the delay in filing the petition to set aside abatement against the defendant. I.A.No.168 of 2016 has been filed to bring the legal heirs of deceased plaintiff on record. I.A.No.169 of 2016 has been filed to bring the legal heirs of the plaintiff on record in I.A.No.115 of 2008. Since the suit itself came to be dismissed, another un-numbered Interlocutory application was filed for restoring the suit to file. The same was dismissed as not maintainable. Since the four interlocutory applications were dismissed by the Court below, the legal heirs of the plaintiffs had to file these four Civil Revision Petitions.

10.In any event, in matters such as bringing legal representatives on record, the Court will have to adopt a liberal and indulgent approach. The Court below has not given any convincing reason for dismissing I.A.No.115 of 2008. The period of delay has to be reckoned only from the date when memo in terms of Order XXII Rule 10-A CPC is filed. Looked at from any angle, this Court is of the view that definitely there is no delay on the part of the plaintiff.

11.The reasons given by the Court below are unsustainable. Therefore, the orders impugned are set aside. The Civil Revision Petitions are allowed. The revision petitioners are given liberty to file appropriate Interlocutory Applications before the Court below to bring all the parties on record. No costs. Since, such liberty has been given, all the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/



To

The Principal District Judge,
Tuticorin.

WEB COPY

+4CCS TO MR.S.SIVATHILAKAR ADVOCATE IN

SR.Nos.76076,76077,76078,76079.

+1CC TO MR.H.ARUMUGAM ADVOCATE IN SR.No.76114.

MR

DS RSK SAR-2 ;04.09.2018; 4P/7C

COMMON ORDER MADE IN
C.R.P.[MD]Nos.2610 to 2613 of 2017
31.07.2018