



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) Nos.1313, 1314 and 1315 of 2016

Clement (Died)

- 1.Mariamamma
- 2.Salomi
- 3.Jijin Francis
- 4.Mary Prasophi
- 5.Sebastin
- 6.Sibi
- 7.Mary Stella
- 8.Soosai Friably

.. Revision Petitioners /
Petitioners/Plaintiffs
in all petitions

vs.

- 1.Johnson @ Malayandi
- 2.Ariba Beevi
- 3.Janet

.. Respondents /Respondents/
Defendants
in all petitions

COMMON PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.Nos.615, 616 and 617 of 2015 in O.S.No.500 of 2008 on the file of the I-Additional District Munsif, Kuzhithurai dated 01.03.2016.

In all petitions:

For Petitioner	:	Mr.C.K.M.Appaji
For Respondent Nos.1&3	:	Mr.K.P.Narayana Kumar
For Respondent No.2	:	Service awaited

COMMON ORDER

O.S.No.500 of 2008 was filed by one Clement before the I-Additional District Munsif, Kulithurai, seeking the relief of declaration and consequential injunction. The said Clement passed away. His legal representatives took steps to come on record. It appears that they have withdrawn the said IA. Thereafter, the present IAs were taken out for condoning the delay in filing the impleading petition and to condone the delay to set aside the



abatement of suit and for bringing on record the legal heirs and to set aside the abatement. All the three IAs were dismissed by order dated 01.03.2016. Challenging the same these Civil Revision Petitions have been filed.

WEB COPY 2. Heard the learned counsel on either side.

3. The learned counsel for the respondents reiterated the reasons set out by the Court below for dismissing the IA in question. I am of the view that substantial justice has to be rendered in this case. A suit for declaration and consequential injunction was filed. The original plaintiff passed away. It is his LRs, who want to now come on record and want to prosecute the suit in question. Therefore, the IAs filed by them can be allowed. In this view of the matter, the orders impugned in these Civil Revision Petitions are set aside. Accordingly, all the Civil Revision Petitions stand allowed. No costs.

4. It appears that both the parties are fishermen. A serious dispute appears to be going on for quite sometime. The defendants are unable to dispose of their property in view of this dispute. It appears that the defendants are in dire need of selling their property in order to raise funds for the marriage of their daughter. Therefore, in order to give quietus to the entire issue, the following directions are issued.

"1. The Court below shall appoint an Advocate Commissioner to localise the suit property by taking the assistance of Taluk surveyor.

2. The plaintiff is the claimant in respect of the property in Survey No.329/5C, the defendant's property is comprised in Survey No.329/5B, the revision petitioners shall not interfere with the defendants' rights in respect of the land comprised in Survey No.329/5B.

3. The suit is of the year 2008. Therefore, the trial Court shall dispose of the suit on merits and in accordance with law, within a period of three months after the Advocate Commissioner's report is obtained. The Advocate Commissioner shall submit his report within a period of four weeks. The Court below shall issue necessary warrant.

4. It is stated that the suit was dismissed for default and that the revision petitioners were successful in having the same restored. Challenging the same they have filed CRP.SR.34949 of 2017 and 34942 of 2017. It is made clear that since dismissal for default was after the demise of the original plaintiff, namely, Clement, the same shall not operate against the revision



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petitioners. The Court below is directed to restore the suit to file after numbering and allowing the necessary applications.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS-III)

To

The I-Additional District Munsif,
Kuzhithurai.

+1cc to Mr.C.K.M.Appaji, Advocate, SR.No.82659.

+3cc to Mr.K.P.Narayana Kumar, Advocate, SR.No.82578.

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pjl

RAM-NM/RP/SAR 3/03.12.2018/3P/6C