



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (PD) (MD) No.1348 of 2016

and

C.M.P. (MD) Nos.6166 to 6168 and 6437 of 2016

WEB COPY

S.V.Ramasamy

...Petitioner / Petitioner/
Appellant / Plaintiff

-vs-

S.V.Bharathan

... Respondent/ Respondent /
Respondent / Defendant

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to call for the records relating to the fair and decreetal order made in I.A.No.8 of 2009 dated 19.03.2010 in A.S.No. Of 2007 on the file of the Sub Court, Sivakasi, against in O.S.No.331 of 1995 on the file of the District Munsif Court, Sivakasi and set aside the same.

For Petitioner : Mr.P.Subbaraj

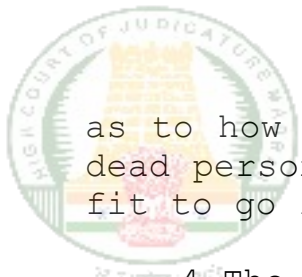
For Respondents : Mr.N.Dilip Kumar

ORDER

O.S.No.331 of 1995 was filed by one S.V.Ramasamy against his brother S.V.Barathan before the District Munsif Court, Sivakasi seeking the relief of declaration and delivery of possession and mandatory injunction.

2.The suit was contested and by judgment and decree dated 13.06.2007, the suit was dismissed. Appeal was filed in time, but there was a delay in re-representation. The Court below dismissed I.A.No.8 of 2009 by order dated 19.03.2010 and declined to condone delay of 262 days in re-representation of the appeal papers. This order is under challenge in this Civil Revision Petition.

3.Normally this Court would have unhesitatingly set aside the order passed by the appellate Court and directed the appellate Court to number the appeal and dispose of the same on merits. But, in this case, the Civil Revision Petition itself questioning the said order came to be challenged six years later. It further appears that on the date of numbering of the Civil Revision Petition, the petitioner himself had passed away. It is not known



as to how this petition could have been numbered in the name of a dead person. In any event, to render justice this Court deemed it fit to go into the merits of the matter.

4.The learned counsel for the sole respondent took this Court to the relevant findings of the trial Court. There was a partition between the brothers and the defendant is occupying an extent that is less than the allotted portion. Therefore, the trial Court came to the conclusion that the remaining extent is in occupation of the plaintiff. Hence, this Court is of the view that allowing the Civil Revision Petition will only result in reviving a dead matter. Therefore, it is better that the matter is given a quietus.

5.The Court below had given convincing reasons for dismissing I.A.No.8 of 2009. The Court below had specifically observed that sufficient cause was not made out to condone the delay in representing the appeal papers. Confirming the reasons given by the lower appellate Court, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To:

1.The Sub Judge, Sivakasi.

2.The District Munsif, Sivakasi.

+1cc to Mr.P.Subbaraj, Advocate Sr.No.78599

+1cc to Mr.N.Dilip Kumar, Advocate Sr.No.78649

TA

VB/SKN/SAR1/27.09.2018/2P/5C

C.R.P.(PD)(MD) No.1348 of 2016

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