



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD) (PD)No.2642 of 2016

1.M.H.Ramamani

2.M.H.Abinaya

3.M.H.Archana

2 to 4

...Petitioners / Petitioners 2 to 4 Plaintiffs

/Vs./

1.M.R.Narasimhachary

2.M.N.Radhakrishnan

3.M.K.Jagadeesh Chandra Babu

4.M.K.Premkumar Babu

5.M.R.Manoharan

6.M.R.Rajan

7.M.R.Baskaran

8.M.R.Sridharan

9.P.R.Perumal

10.P.R.Subramanian

11.P.R.Janardhanan

12.S.V.Dhanalakshmi

13.S.S.Brindha

14.K.S.Vijayamala

15.M.M.Suvedham

16.K.R.Jothishmathi

17.P.P.Rukmani

18.P.P.Srinivasan

19.P.Thirumal

...Respondents 1 to 19 / Respondents/Defendants

20.M.R.N.Subramanian ...20th Respondent /1st Respondent /1st Plaintiff

Prayer: Civil Revision Petition - filed under 115 of the Code of the Civil Procedure, to set aside the fair and decreetal order dated 06.06.2016 passed in I.A.No.5 of 2012 in O.S.No.510 of 2004 on the file of the First Additional Subordinate Judge, Madurai, by allowing this civil revision petition and to grant such further relief.

For Petitioner : Ms.P.Jessi Jeevapriya
for Mr.G.Aravinthan

For R-2 : Mr.T.R.Subramanian

For R-3 to R-8 : Mr.J.R.Hariharan

For R-19 : Mr.V.S.Kishore Kumar

For R-20 : Mr.V.Hagendran

For R-1, R-9 to R-18 : No appearance

**ORDER**

O.S.No.510 of 2004 was filed by one M.R.N.Subramanian before the First Additional Sub Court, Madurai, seeking relief of partition and separate possession. Thereafter, he wanted to withdraw from the suit proceedings. Therefore, the present revision petitioners got themselves transposed from the array of the defendants to that of the plaintiffs. The said suit came to be dismissed for default. To restore the same, an application has been taken out under Order 9 Rule 9 CPC. There was a delay of 385 days in filing the restoration application. To condone the same, I.A.No.5 of 2012 was filed. The said application was dismissed. Questioning the same, the civil revision petition has been filed.

2. When the matter taken up for disposal, this Court expressed its view that this being a suit for partition, this Court should be liberal in allowing the restoration application.

3. At that stage, the learned counsel appearing for the contesting respondents brought to my attention that the revision petitioners have filed another suit in O.S.No.46 of 2009 seeking the very same relief of partition and separate possession and in which, the present suit schedule properties are also fully covered. Therefore, this Court is of the view that there is no need to restore O.S.No.510 of 2004. But, it is made clear that all rights of the revision petitioners, which impelled them to be the plaintiffs in O.S.No.510 of 2004 would remain intact and they can project their rights in O.S.No.46 of 2009. Therefore, there is no need to interfere with the order passed by the Court below.

4. With these observations and protecting the rights of the revision petitioners, the civil revision petition is dismissed. No costs.

Sd/-

Assistant Registrar(Record)

/True Copy/

Sub Assistant Registrar(cs-III)

To
The First Additional Subordinate Judge, Madurai.

Order made in
C.R.P. (MD) (PD) No.2642 of 2018
17.09.2018

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