



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD).No.1829 of 2018 and
C.M.P.(MD)No.8014 of 2018

A.Maniammal

... Petitioner/Petitioner/
Appellant

Vs.

1. S.Sudalaimadan

... 1st Respondent/1st Respondent/
1st Respondent

Palanisamy (Died)

2.P.Muniammal

3. P.Munusamy

4. M.Ravi

..Respondents 2 to 4/Legal heirs of
deceased 2nd Respondent/
Proposed Respondents 3 to 5

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decretal order passed in I.A.No.71 of 2018 in A.S.No.15 of 2013, dated 19.07.2018 on the file of the Principal Sub Court, Tirunelveli.

For Petitioner

: Mr.H.Arumugam

For Respondents

: Mr.R.Venkatesan,
for M/s.Right Law Associates.

O R D E R

The plaintiff in O.S.No.489 of 2005 on the file of the Principal District Court, Tirunelveli, is the Revision petitioner herein. The suit is one for declaration and permanent injunction. In the said suit, two persons were shown as defendants. One was Sudalaimadan and the other was Palanisamy. The said Sudalaimadan raised counter claim against the Revision petitioner herein. The suit filed by the Revision petitioner herein was dismissed. But the counter claim filed by the first defendant was decreed on 23.12.2011. It appears that the decree allowing the counter claim was put into execution also. As on date the first respondent herein is enjoying the suit property that is the subject matter of the counter claim.



2. Aggrieved by the dismissal of the suit, the Revision petitioner herein filed A.S.No.15 of 2013 before the Principal Sub Court, Tirunelveli. During the pendency of the first appeal, the second defendant Palanisamy passed away. The Revision petitioner ought to have taken steps at the appropriate stage. But she did not do so. As a result, the proceedings against the said Palanisamy stood abated. Therefore, to set aside the same, an application was filed. But there was a delay of 286 days in filing the petition to set aside the abatement as against the second defendant. Therefore, I.A.No.71 of 2018 was filed to condone the delay. The Court below by order dated 19.07.2018, dismissed the said application. The said order is under challenge in this Civil Revision petition.

3. The learned counsel appearing for the first respondent pointed out that the Revision petitioner is fully aware of the death of the said Palanisamy. In fact, she had taken part in the funeral ceremonies also. Therefore, according to the learned counsel appearing for the first respondent, the affidavit filed in support of I.A.No.71 of 2018 is full of false averments and therefore, the Court below rightly dismissed the said application. She wanted this Court to sustain the order impugned in this Civil Revision petition.

4. After carefully considering the rival contentions, this Court is of the view that the Revision petitioner herein deserves to be given one more opportunity to pursue her first appeal to its logical conclusion. In this case, immovable property rights are involved. The counter claim filed by the first respondent has already been allowed. Therefore, I am of the view that an indulgent approach deserves to be adopted in this case. The first appeal filed by the Revision petitioner herein is very much alive. The first respondent is factually contesting the same. Therefore, in the interest of justice, the abatement against the second respondent deserves to be set aside.

5. Therefore, the order impugned in this Civil Revision petition is set aside. The Civil Revision petition stands allowed, accordingly.

6. The first appeal is of the year 2013. Therefore, the Court below is directed to dispose of the same within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar(CS-III)



To

The Principal Subordinate Judge,
Tirunelveli.

Copy to

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. 2 copies

- 1 CC TO Mr.H.Arumugam , ADVOCATE IN SR No. 85577.
- 1 CC TOM/s.Right Law Associates. IN SR No.85762.
-

Pmu

DS SV SAR3 29 10 2018 3P 6C

C.R.P.(MD).No.1829 of 2018 and
C.M.P.(MD)No.8014 of 2018

19.09.2018