



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.02.2018

DELIVERED ON : 28.03.2018

WEB COPY

CORAM:

THE HONOURABLE MRS. JUSTICE S. RAMATHILAGAM

C.R.P (NPD) (MD) No.178 of 2011

and

M.P (MD) No.1 of 2011

1.Marikkannu

2.A.Chandrasekaran

3.Arunagiri

4.Veeramani

... Petitioners/Petitioners/Proposed
Petitioners 2 to 5/Proposed
Defendants 2 to 5

Vs.

M.K.Shurfuddin

... Respondent /Respondent/
Respondent /Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and decreetal order, dated 28.09.2010, made in I.A.No.272 of 2009 in I.A.No.200 of 2009 in O.S.No.1314 of 1995 on the file of the Principal District Munsif Court, Tiruchirapalli.

For Petitioners

: M/s.J.Maria Roseline

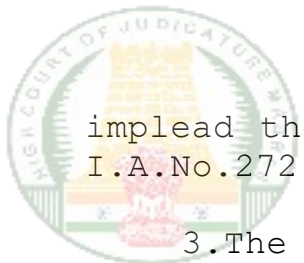
For Respondent

: Mr.D.Rajendran

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 28.09.2010, made in I.A.No.272 of 2009 in I.A.No.200 of 2009 in O.S.No.1314 of 1995 on the file of the Principal District Munsif Court, Tiruchirapalli.

2.The brief facts of the case is that the plaintiff, the respondent herein, had filed a suit in O.S.No.1314 of 1995 against Arumugam for recovery of money. The said suit was decreed as exparte on 25.01.1996. Hence, Arumugam had filed a petition in I.A.No.200 of 2005 to condone the delay of 3292 days caused in filing the petition to set aside the exparte decree. Pending I.A.No.200 of 2005, Arumugam died on 11.12.2005 leaving behind the petitioners herein as his legal heirs. Hence, the petitioners have been employed as Legal heirs of Arumugam in the I.A.No.200 of 2005. There was a delay of 1159 days in filing a petition to



implead the petitioners herein. Hence, the petitioners had filed I.A.No.272 of 2009 seeking to condone the delay.

3.The learned counsel for the respondent submitted that pending I.A.No.200 of 2009 Arumugam died on 13.09.2005. Thereafter no step has been taken to implead these petitioners. On 12.05.2005 execution petition was filed. After the demise of Arumugam, on 20.04.2006 the execution petition was dismissed as not pressed. Thereafter, on 25.04.2007 another execution petition was filed by impleading the petitioners as legal heirs. The petitioners entered appearance in the execution petition. Hence, the condone delay petition seeking condone the delay of 1159 days is to be dismissed.

4.After perusing the records the trial Court has dismissed the petition. Against which, this Civil Revision Petition has been filed by the petitioners.

5.Heard both sides and perused the documents available on record.

6.From the perusal of records it is observed that this application has been filed to set aside the abatement with a delay of 1159 days in filing petition to set aside the abatement. The fact of death of Arumugam Pillai was admitted in the written statement as 13.09.2005 during the pendency of I.A.200 of 2005. But petitioner has not taken any steps. The judgment was passed on 25.01.1996 and the execution application was also filed on 12.05.2005 after very long time and the said application was not proceeded and it was dismissed, and subsequently the petitioners were added as L.Rs. in the second execution petition in which, the counsel has also appeared for the petitioners herein and the order of attachment was passed. Hence, this petition is filed belatedly and without any reason for not filing the same in time. It is observed that only to protract the proceedings the petition has been filed. In view of the observation that no reasons has been stated by the petitioner for such a delay, when an order of attachment was also passed in the second execution petition, the dismissal of the said petition by the trial court does not require any interference.

7.In the result, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl Side)

/True Copy/



To

The Principal District Munsif,
Tiruchirapalli.

Copy to:

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

+1cc to Mr.R.Devaraj Advocate in SR. No.58701
+1cc to Mr.J.Maria Roseline, Advocate in SR. No.59111
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DS/JC/SAR-2/18.05.2018/3P/6C

Judgment made in
C.R.P (MD) No.178 of 2011 (NPD)
and
M.P (MD) No.1 of 2011