

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.2453 of 2014

and

MP No.1 of 2014

1. K.Moorthy (Died)

2. M.Suresh

3.M.Dinesh

4.Minor Monisha

(First Petitioner Died, Appellants 2 to 4
LRs of the deceased first petitioner as
per the memo dated 27.04.2019 and
vide Court order dated 27.04.2019 is recorded
made in C.R.P.No.2453 of 2014)

Petitioners

Vs

1.S.Sivasankar

2.Sivaperumal

3.Dharmalingam

4.Murugan

Respondents

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Petition filed under Article 227 of the Constitution of India,
against the fair and decreetal order dated 22.01.2014 passed in
I.A.No.825 of 2012 in O.S.No.212 of 2003 on the file of the District
Munsif's Court, Panruti.

For Petitioners : Mr.T.Sezhian
For Respondents : Ms.S.Sukanya
for Mr.P.J.Rishikesh

ORDER

The Civil Revision Petition has been filed challenging the order, dated 22.01.2014 passed by the District Munsif Court, Panruti in I.A. No.825 of 2012 in O.S. No.212 of 2003.

Brief facts leading to the filing of the instant revision are as follows :-

2. The petitioners are the legal representatives of the deceased M. Poongathai Ammal, who had instituted a suit in O.S. No.212 of 2003 represented by her Power Agent V.Palanisamy against the respondents seeking for declaration and for permanent injunction in respect of the suit schedule property. M.Poongathai Ammal, claimed ownership of the suit schedule property based on a sale deed dated 22.05.2003, which is filed as Document No.5 along with the plaint. A written statement was also filed by the second respondent, who is the second defendant in the suit and the remaining defendants in the suit adopted the written statement filed by the second respondent. In the

written statement, they admit that Murugesu Padayachi was the purchaser and the parent sale deed is dated 21.10.1973, under which M.Poongathai Ammal claims title, by virtue of the sale deed, dated 22.05.2003, but she disputes that the subject property is not the self-acquired property of Murugesu Padayachi, but it is a joint family property. M.Poongathai Ammal died on 09.10.2007 during the pendency of the suit. It is case of the petitioners, who are the legal representatives of M.Poongathai Ammal that since, the suit was instituted through a Power Agent, V. Palanisamy by M.Poongathai Ammal, they did not know the status of the suit. I.A. 825 of 2012 in O.S. No.212 of 2003 was filed by the petitioners claiming to be legal representatives of the deceased M.Poongathai Ammal, the plaintiff in the suit, to condone the delay of 1710 days to bring the Legal Representatives on record for the deceased plaintiff, M.Poongathai Ammal. In the affidavit filed in support of I.A. No.825 of 2012, they have stated that Poongathai Ammal died on 09.10.2007 and they further stated that they were under the impression that the suit will be conducted by the Power Agent of M.Poongathai Ammal properly. But only recently i.e. just before the filing of the application, when they contacted the Advocate of M.Poongathai Ammal they were advised to file an application to condone the delay in bringing the Legal

Representatives on record for the deceased M.Poongathai Ammal. Accordingly, they filed I.A. No.825 of 2012 in O.S. No.212 of 2003 seeking to condone the delay of 1710 days in bringing the Legal Representatives of the deceased M.Poongathai Ammal on record, who was the original plaintiff in the suit .

3. A counter affidavit is also filed by the second respondent, who is the second defendant in the suit and the remaining defendants also adopted the counter filed by the second respondent. In the counter affidavit, they have stated that the petitioners have not given sufficient reasons for condoning the inordinate delay of nearly 4 ½ years in filing an application to bring on record, the legal representatives for the deceased M.Poongathai ammal.

4. The Trial Court by its order dated 22.01.2014 in I.A. No.825 of 2012 in O.S. No.212 of 2003 dismissed the said application on the ground that no sufficient reasons have been given by the petitioners for condoning the inordinate delay. Aggrieved by the dismissal of I.A. No.825 of 2012 in O.S. No.212 of 2003, the instant Civil Revision Petition has been filed.

5. Heard Mr.T. Sezhian, learned counsel for the petitioner and Ms.S. Sukanya, learned counsel representing Mr.P.J.Rishikesh, learned counsel for the respondents 1 to 4.

6. The learned counsel for the petitioner submitted that since the suit was instituted by M.Poongathai Ammal against the respondents only through a Power Agent, the petitioners were not informed about the status of the suit. According to the petitioner, only in the year 2012, they were aware that they were not brought on record as Legal Representatives for the deceased M.Poongathai Ammal in O.S. No.212 of 2003. Immediately, after coming to know, they have filed the application I.A. No.825 of 2012 to bring on record as legal heirs for the deceased M.Poongathai Ammal. Further, the learned counsel for the petitioner submits that subsequent to the filing of the suit in O.S. No.212 of 2003 by M.Poongathai Ammal as a counter blast, the respondents / defendants filed another suit in O.S. No.154 of 2003 seeking for declaration and injunction against the petitioners / proposed plaintiffs. According to the learned counsel for the petitioner in that suit, the petitioners have been brought on record by the respondents / defendants, who filed an application to bring on record, the petitioners / proposed plaintiffs as Legal Representatives of the

deceased M.Poongathai Ammal. This being the case, according to him, the Trial Court ought to have allowed the application, even though there is an inordinate delay of 1710 days.

7. Per contra, the learned counsel for the respondents / defendants would submit that the Trial Court has rightly rejected the application, as the petitioners have not given sufficient reasons for condoning the inordinate delay.

Discussion :

8. The suit filed by M.Poongathai Ammal in O.S. No.212 of 2003 is admittedly represented by a Power Agent. The petitioners are the Legal Representatives of the deceased Poongathai Ammal, who died on 09.10.2007 and they are the husband, two sons and minor daughter respectively of M.Poongathai Ammal. The suit has been filed for declaration and injunction in respect of the suit schedule property. Along with the plaint, the plaintiff in O.S. No.212 of 2003 has filed 7 documents including the sale deed dated 22.05.2003, which is the plaint document No.5 to establish her ownership of the suit schedule property. The written statement has also been filed by the respondents. The defence raised by the respondents is that Murugesu

Padayachi from whom the plaintiff's title is traced had purchased it, as a joint family property along with others, but it is the case of the petitioners/ plaintiffs that it is the self acquired property of Muruges Padayachi. During the course of arguments, the learned counsel for the petitioners also pointed out that a similar suit for declaration and injunction has also been filed by the respondents / defendants against the petitioners / proposed plaintiffs, which is the subject matter of O.S.No.154 of 2003 before the same Court and in that suit, the petitioners have been brought on record as Legal Representatives of the deceased M.Poongathai Ammal, at the instance of respondents / defendants in O.S. No.212 of 2003.

9. The Trial Court without considering all these factors has dismissed the application in I.A. No.825 of 2012 in O.S. No.212 of 2003, solely on the ground that sufficient reasons have not been given in the affidavit filed in support of I.A. No.825 of 2012 seeking to condone the delay of 1710 days to bring the legal representatives on record for the deceased M.Poongathai Ammal. As seen from the plaint and the written statement filed in the suit O.S. No.212 of 2003 as well as from the submissions made by the learned counsel for the petitioners that another suit has been filed by the respondents against the petitioners seeking for a similar relief in their favour in the interest

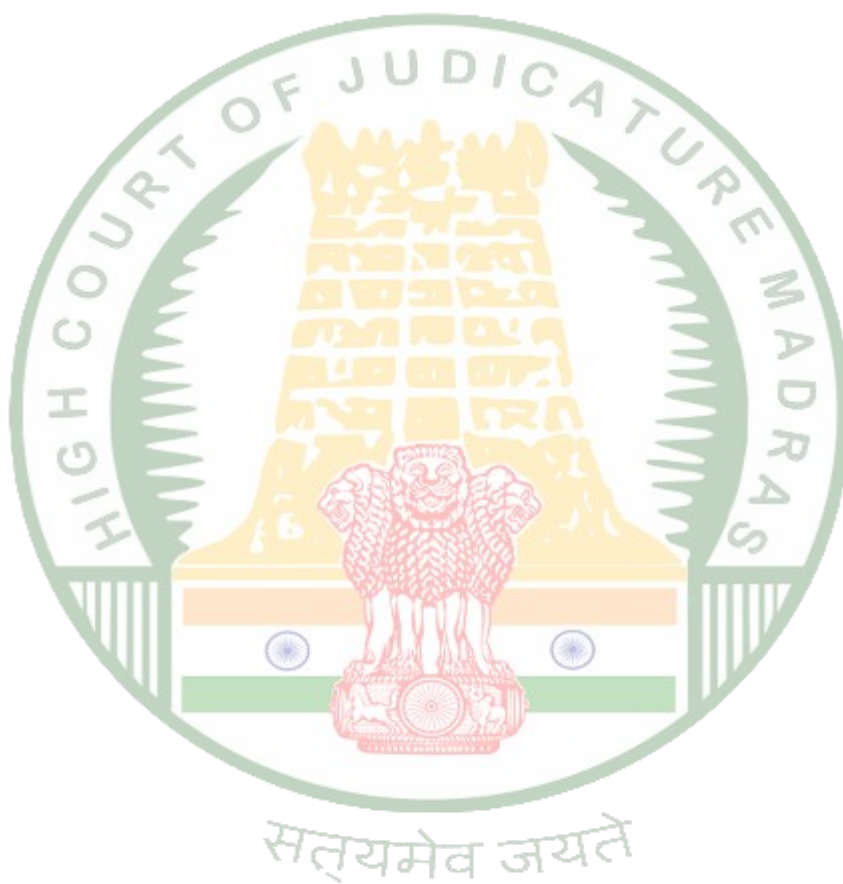
of justice and for an effective adjudication of the dispute between the parties, it would be necessary that the application filed by the petitioner's to bring on record the legal heirs of the deceased M.Poongathai Ammal will have to be allowed. However, considering the inordinate delay and the indifference and laxity shown by the petitioners to prosecute the suit O.S. No.212 of 2003 diligently, this Court is of the considered view that costs will have to be imposed on the petitioners for allowing the application to bring on record, the legal heirs for the deceased M. Poongathai Ammal.

10. In the result, the impugned order dated 22.01.2014 in I.A. No.825 of 2012 in O.S. No.212 of 2003 is hereby set aside and the Civil Revision Petition is allowed on condition that the petitioners pay a sum of Rs.10,000/- (Rupees ten thousand only) as costs to the respondents, within a period of four weeks from the date of receipt of a copy of this order, failing which the Civil Revision Petition would stand automatically dismissed.

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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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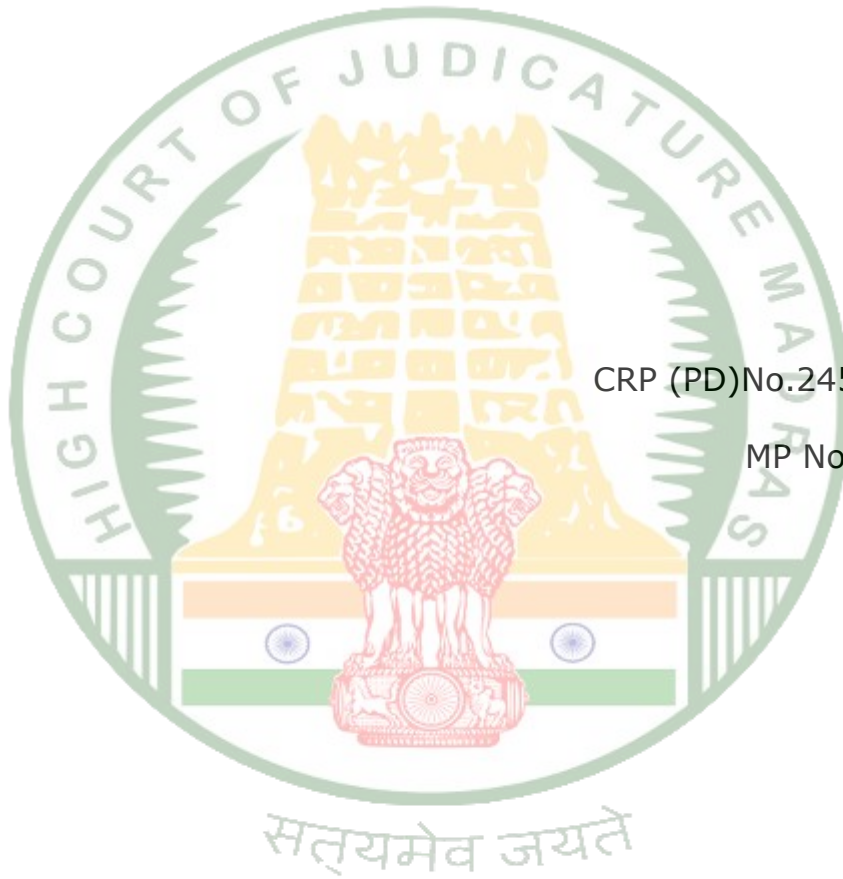
To
The District Munsif Court, Panruti.



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ABDUL QUDDHOSE, J.

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