



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P(MD)Nos.2704 & 2705 of 2010

WEB COPY

C.R.P (MD) No.2704 of 2010:

Radhakrishnan

... Petitioner/
Petitioner/Proposed 2nd Plaintiff

Vs.

Kaliappan Asari

... Respondent/
Respondent/Defendant

Prayer : Petition filed under Section 115 of the Code of Civil Procedure against the order dated 01.07.2009 passed in I.A.No.28 of 2008 in O.S.No.78 of 1999 on the file of the II Additional District Munsif Court, Kuzhithurai.

For Petitioner : Mr.C.Godwin

For Respondent : Mr.K.Sreekumaran Nair

* * * * *

C.R.P (MD) No.2705 of 2010:

Radhakrishnan

... Petitioner/
Petitioner/Proposed 2nd Plaintiff

Vs.

1.Kaliappan Asari

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

Defendant

2.Kamalamma

3.Valsala

4.Kumarithangam

5.Vijayakumari

6.Lalithakumari

... Respondents 2 to 6/
Respondents 2 to 6/
Proposed Defendants 2 to 6

Prayer : Petition filed under Section 115 of the Code of Civil Procedure against the order dated 01.07.2009 passed in I.A.No.51 of 2008 in O.S.No.78 of 1999 on the file of the II Additional District Munsif Court, Kuzhithurai.



For Petitioner : Mr.C.Godwin
For Respondents : Mr.K.Sreekumaran Nair for
R.1

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COMMON ORDER

C.R.P(MD)No.2704 of 2010 has been filed against the order dated 01.07.2009 passed in I.A.No.28 of 2008 in O.S.No.78 of 1999 on the file of the II Additional District Munsif Court, Kuzhithurai.

2. C.R.P(MD)No.2705 of 2010 has been filed against the order dated 01.07.2009 passed in I.A.No.51 of 2008 in O.S.No.78 of 1999 on the file of the II Additional District Munsif Court, Kuzhithurai.

3. The case of the petitioner is that originally, the father of the petitioner, namely, Kolappan Asari, filed a suit in O.S.No.78 of 1999, seeking a decree for partition and separate possession of 26 cents in the schedule property along with his residential building and the petitioner came to know about the pendency of the said partition suit only in the year 2007 after the receipt of notice in O.S.No.221 of 2000 wherein the property was sought to be redeemed. According to the petitioner, there was a delay of less than 3 months from the date of knowledge, but from the date of dismissal of the original suit, there is a delay of 936 days and therefore, the petitioner filed an application in I.A.No.28 of 2008 in O.S.No.78 of 1999 seeking to condone the delay of 936 days, however, the said application came to be dismissed by the lower Court vide order dated 01.07.2009. Challenging the same, C.R.P(MD)No.2704 of 2010 has been filed.

4. The petitioner also filed I.A.No.51 of 2008 seeking to implead him as the legal representative of the deceased plaintiff in O.S.No.78 of 1999 and the lower Court dismissed the said application on the ground that since the suit in O.S.No.78 of 1999 got abated and aggrieved thereby, C.R.P(MD)No.2705 of 2010 has been filed.

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

6. The main contention of the learned Counsel for the petitioner is that from the date of knowledge, there is a delay of less than 90 days which has been properly explained and the lower



Court ought not to have dismissed the application in I.A.No.28 of 2008. One of the persons claiming the share by means of a partition, has made an averment in paragraph 9 that he is entitled only to 17 cents. The lower Court has taken note of the fact that the petitioner could have received the notice and he could have knowledge on 07.04.2007, however, there is no plausible explanation given by the petitioner as to why he belatedly filed the application for condoning the delay on 03.07.2007. The lower Court has also come to the conclusion that the reason given for condoning the delay cannot be accepted.

7. On perusal of the materials available on record, this Court finds that though the petitioner stated that he had received the notice in respect of O.S.No.221 of 2000 on 07.04.2007, no documentary evidence was produced to prove the same and therefore, the order of the lower Court in rejecting the application for condoning the delay, cannot be found fault with. The litigation cannot be continued endlessly and final judgment and decree came to be passed as early as in the year 1999 and two decades have been gone by and for nearly 10 years, the present civil revision petitions are pending.

8. I am satisfied with the reasons given by the lower Court that there are no sufficient and genuine reasons given by the petitioner to condone the delay and hence, C.R.P(MD)No.2704 of 2010 is liable to be dismissed.

9. The question of impleading the petitioner as a party would become necessary provided the suit is alive. When the suit was already dismissed, the question of impleading a person in a suit that has already attained finality, does not arise. Passing an order would only be an academic and it is not going to give any solution except opening the pandora's box. Hence, C.R.P(MD)No.2705 of 2010 is also liable to be dismissed.

10. In the result, both the Civil Revision Petitions are dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)



C.R.P(MD)No.2704 of 2010:

To
The II Additional District Munsif,
Kuzhithurai.

+1 CC to M/s.K.SREEKUMARAN NAIR, Advocate (SR-95591[F] dated
01/11/2019)

C.R.P (MD) Nos.2704 & 2705 of 2010
01.11.2019

KM/ (25.11.2019) 4P 3C