



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.11.2019

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (NPD) (MD) No.1447 of 2013
and C.M.P. (MD) Nos.9517 to 9519 of 2019

S.Chinnaiah ... Revision Petitioner/Defendant/
Respondent/Petitioner
Vs.

Adaikalam (Died)

1.A.Tamilarasi

2.A.Kowsalya

3.A.Meyyanathan

4.Minor A.Saravanapriyan

5.Minor A.Nandhini

(R4 & R5 are represented by their natural guardian and mother 1st
respondent herein)

... Respondents/Plaintiffs/Petitioners/Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the order dated 31.07.2013 in E.A unnumbered of 2012 in E.P.No.44 of 2011 on the file of the Principal District Munsif, Karaikudi in O.S.No.273 of 1990 on the file of the District Munsif, Devakottai.

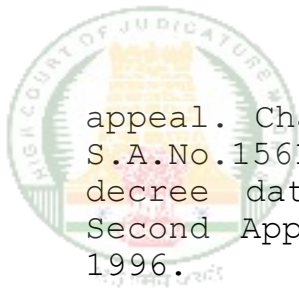
For Petitioner : Mr.V.R.Shanmuganathan
For R1, R4 & R5 : Mr.R.Sundar Srinivasan
For R2 : No appearance
For R3 : Died

O R D E R

This Civil Revision Petition is filed challenging the application filed under Section 47 of the Code of Civil Procedure.

2. It is necessary to allude to the facts briefly which have been stated in the revision in order to appreciate the issue involved.

3. The respondents herein as plaintiffs had filed a suit in O.S.No.273 of 1990 for recovery of possession and damages against the deceased sole respondent. The suit was dismissed on 28.10.1992 and challenging the said judgment and decree the plaintiffs had filed A.S.No.34 of 1996 on the file of the Subordinate Court, Devakottai. The learned Subordinate Judge, Devakottai by his judgment and decree dated 30.06.1997 was pleased to allow the



appeal. Challenging the same the sole revision petitioner had filed S.A.No.1561 of 1996 on the file of this Court. By a judgment and decree dated 10.01.2013, this Court was pleased to dismiss the Second Appeal confirming the judgment and decree in A.S.No.34 of 1996.

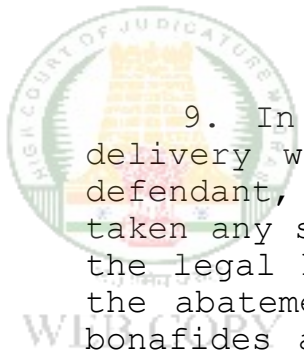
4. The plaintiffs in the meanwhile had instituted execution proceedings in E.P.No.44 of 2011 before the Principal District Munsif, Karaikudi. After dismissal of the Second Appeal in S.A.No.1561 of 1996 the sole defendant/revision petitioner herein had filed an application under Section 47 of the Code of Civil Procedure. The learned Principal District Munsif, Karaikudi, without numbering the same, was pleased to dismiss the said application on the ground that the petitioner had been set ex-parte as early as on 08.09.2011 and that no steps have been taken to set aside the said order.

5. Challenging the said order the deceased sole revision petitioner had filed the present revision. Pending the revision, he had passed away on 21.12.2016. In the meantime, prior to the death of the revision petitioner, the decree holder respondent herein had executed the decree and delivery of the property was taken on 02.12.2013 itself. The said order has not been challenged by the sole revision petitioner. Three years after the possession being taken the legal representatives of the deceased sole revision petitioner have come forward with the present application for condoning the delay, to set aside the abatement caused due to the death of the deceased sole revision petitioner set aside the abatement and bring on record them.

6. The only reason that has been given is that they had come to know about the execution proceedings when they had received summons from the revenue officials to appear for enquiry. The petitioner would contend that in the interregnum the delay of 9822 days had been occurred.

7. Heard the learned counsels and perused the papers.

8. From a perusal of the papers it appears that the Second Appeal was dismissed after contest by a judgment and decree dated 10.01.2013. The execution petition has also been ordered and delivery has been taken on 02.12.2013. Thereafter, the sole defendant/revision petitioner did not take any steps whatsoever to challenge the order directing delivery of possession, but filed an application under Section 47 of the Code of Civil Procedure which was also dismissed without being numbered. In the order dismissing the application filed under Section 47 CPC, the learned Principal District Munsif, Karaikudi, had stated that the sole defendant had been set ex-parte on 08.09.2011 but not taken any steps to set aside the ex-parte order.



9. In the above circumstances and considering the fact that delivery was effected as early as in December 2013 and the sole defendant, who was alive for further period of 3 years, had not taken any steps to challenge the same, the present petition filed by the legal heirs to condone the delay of 9822 days in setting aside the abatement caused due to the death of the sole defendant lacks bonafides and sufficient reasons have not been given for the delay and therefore, this Court is not inclined to condone the delay in filing the set aside petition and consequently the petitions filed to set aside the abatement and to bring on record the legal heirs of the deceased sole revision petitioner are also closed.

10. In the result, this Civil Revision Petition is dismissed as abated. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar(CS)

CM

To

1. The Principal District Munsif, Karaikudi
2. The District Munsif, Devakottai.

+1cc to Mr.R.Sundarsrinivasan, Advocate, SR No.96572

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KK/SAR/05.12.2019/3P-4C/