

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 18.03.2020****CORAM:****THE HONOURABLE MR. JUSTICE S.S.SUNDAR****C.R.P. (MD) No.1832 of 2012****WEB COPY**

Muthiah Mudaliar(died)

1.Maragatham Ammal

2.Natarajan (died)

3.Sanharasubramanian

4.Susila

5.Amutha

6.Muthu(minor)

7.Maragatham(minor)

(minor petitioners 6 & 7 are represented
by their natural guardian/mother- 5th petitioner)(Petitioners 5 to 7 are brought on record as
LRs of the deceased 2nd petitioner

vide order dated 18.06.2015 made in

M.P. (MD) No.1 of 2013)

... Petitioners

vs.

Arunachalam

... Respondent

PRAYER: Petition filed under Section 115 of the Civil Procedure Code against the order passed in I.A.No.63 of 2010 in A.S.No.51 of 2003, by the Subordinate Court at Ambasamudram, dated 24.08.2011.

For Petitioners : Mr.H.Arumugam

For Respondent : Mr.R.Manimaran

ORDER

The defendants in the suit in O.S.No.295 of 1999, on the file of the Additional District Munsif Court, Ambasamudram are the revision petitioners.

2. The respondent in this Civil Revision Petition filed a suit in O.S.No.295 of 1999 for declaration and for consequential injunction and the suit was decreed as prayed for. The revision petitioners preferred an appeal in A.S.No.51 of 2003, on the file of the Subordinate Court, Ambasamudram. The appeal was dismissed for default and an interlocutory application was filed by the revision petitioners in I.A.No.63 of 2010 to set aside the order dismissing the appeal for default and to restore the appeal. The lower Court dismissed the said petition and a revision is preferred by the appellants before the lower Court in the appeal, challenging the judgment and decree passed in the suit filed by the respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The lower Court has found as a matter of fact that the suit



was dismissed for default for the second time and that the revision petitioners have given the same reasons in the affidavit filed in support of the petition, which they had given earlier for restoration of the suit, which was dismissed for default for the non-appearance of the petitioners or their Counsel earlier. Since the reasons stated by the revision petitioners are not convincing and the petitioners though have given multiple reasons, the lower Court refused to accept the same. The lower Court found that there are no *bonafides* in the case of the revision petitioners. The lower Court has given cogent reasons and considered the conduct of the revision petitioners.

4. In the counter affidavit filed by the respondent, the respondent has submitted the dates and events and also the attitude and the conduct of the revision petitioners in prolonging the litigations for no valid reason. The reasons stated by the revision petitioners for their non-appearance were disputed by the respondent. The appeal in A.S.No.51 of 2003 was earlier dismissed for default on 30.08.2004. I.A.No.172 of 2005 filed by the revision petitioners was allowed on payment of costs. Thereafter the revision petitioners filed an application for appointment of Advocate Commissioner, which was dismissed. Following that, again the appeal was dismissed for default on 13.10.2005.

5. It is also brought to the notice of this Court that the Interlocutory Application which was dismissed by the lower Court for appointment of Advocate Commissioner, was challenged before this Court in C.R.P.No.166 of 2006 and the revision petition was decided on merits, though the appeal itself was dismissed for default earlier. It was also pointed that the revision petitioners obtained an order of stay in the Civil Revision Petition showing as if the appeal was pending, even though, the appeal was dismissed earlier. The petitioners took more than four years time to number the application. The lower Court also found that the petitioners had given the same reasons for the delay repeating what they have stated earlier for their non-appearance leading to the dismissal of the appeal for non-appearance for the first time.

6. In view of the above stated circumstances, this Court do not find any reason to interfere with the order passed by the lower Court in I.A.No.63 of 2010 in A.S.No.51 of 2003, dated 24.08.2011. Hence, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar

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To

The Subordinate Court, Ambasamudram.

+1 CC to M/s.R.MANIMARAN, Advocate(SR-12653[F] dated 20/03/2020)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-12889[F] dated 23/03/2020)

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