



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 03.03.2020

CORAM:

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) .No.2335 of 2010

and

M.P. (MD) .No.1 of 2010

Mariammal (Died)

1.V.Dhandayuthapani

2.V.Kaliyaperumal

3.V.Jayalakshmi

:Petitioners/Petitioners/Plaintiffs

Vs.

1.Sundaram Sethurayar

2.D.S.Venkatesa Pathar

3.Rajangam

4.D.Arunachalam Chettiar

5.Elanjiyathammal

6.Senthamil Selvi

7.Ganesan

8.Mallika

:Respondents/Respondents/Defendants

PRAYER: This Civil Revision Petition has been filed under Article 227 of Civil Procedure Code, against the fair and decreetal order passed in I.A.No.354 of 2010 in O.S.No.71 of 1992 on the file of the District Munsif, Thiruvaiyaru dated 24.09.2010.

For Petitioners

: Mr.V.Chandrasekar

For Respondents

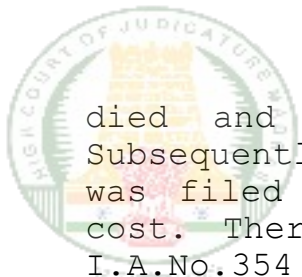
: No appearance

1, 2, 4 & 6 to 8

ORDER

This petition has been filed against the order passed in I.A.No.354 of 2010 in O.S.No.71 of 1992 on the file of the District Munsif, Thiruvaiyaru dated 24.09.2010.

2.The petitioners are the plaintiffs and the respondents are the defendants in the suit. The petitioners filed a suit in O.S.No.71 of 1992 seeking for declaration with regard to 'A' schedule property and for possession with regard to 'B' scheduled property and for possession in respect of the property described as 'C' scheduled property, which is part of 'A' Scheduled property. During the pendency of the suit, the first plaintiff viz., Mariammal



died and the suit was dismissed for default on 18.07.2005. Subsequently, a petition in I.A.No.180 of 2006 to restore the suit was filed and the same was restored on 02.09.2009 on payment of cost. Thereafter, the petitioners/plaintiffs filed a petition in I.A.No.354 of 2010 to amend the plaint and I.A.No.765 of 1992 and the same was dismissed by the trial Court on 24.09.2010. Against which, the petitioners have preferred this civil revision petition.

3. Brief substance of the petition in I.A.No.354 of 2010 is as follows:

The petitioners are the legal heirs of deceased Mariammal. When deceased Mariammal was alive, she had filed a suit in O.S.No.71 of 1992 and filed a petition in I.A.No.765 of 1992 for amendment in the plaint to include a relief of recovery of possession and the petition was dismissed for default on 09.02.1999. Subsequently, the suit was also dismissed for default on 16.02.1999. Thereafter, the deceased Mariammal filed a petition to restore the suit along with a petition to condone the delay and the petitions were allowed and the suit was restored to file. But the I.A petition was not restored. Thereafter the plaintiff filed a petition in I.A.No.255 of 2004 to amend the plaint, stating that due to oversight the previous amendment petition was not restored. When the matter came up for trial, Mariammal died and the petitioners/plaintiffs were impleaded as the legal heirs of the said Mariammal. Being illiterate and by inadvertence the petitioners failed to carry out the amendment and hence, the amendment petition is to be allowed.

4. The brief substance of the counter filed by the respondents is as follows:

The petitioner filed an application to amend the plaint in I.A.No.765 of 1992 in O.S.No.71 of 1992. When the suit was transferred from District Munsif Court, Thiruvaiyaru to District Munsif Court, Kumbakonam a fresh number I.A.No.829 of 1993 was assigned and the same was allowed. Thereafter, the petitioner failed to carry out the amendment and on 09.02.1999 a dismissal order was passed for non compliance subsequently, the suit was dismissed. The I.A.No.829 of 1993 was dismissed prior to the dismissal of the suit. Thereafter, the petitioner filed two applications in I.A.No.254 of 2004 and I.A.No.255 of 2004 for the same relief. Both the petitions were dismissed. Against which, the petitioners preferred civil revision petitions in C.R.P.No.720 of 2005 and C.R.P.No.734 of 2005 before this Court. When those petitions are listed, there was no suit pending before the trial Court and both the civil revision petitions were dismissed by the high court. The petitioners, who were aware of the above said facts suppressed the same, filed an application to restore the I.A.No.765 of 1992 as if the petition was dismissed for default. The petition in I.A.No.762 of 2004 was dismissed. The petitioner filed another application numbered as I.A.No.823 of 1993 and the same was



allowed by the Court and later it was dismissed for non compliance of the Court order.

5. After hearing both sides argument, the Lower Court, has dismissed the petition. Against which, the petitioner preferred this revision on the following grounds:

(i) The trial Court failed to note that the suit was filed by the Mother of the petitioner before the District Munsif Court, Thanjavur, and later it was transferred to the District Munsif Court, Kumbakonam.

(ii) The trial Court failed to note that application for amendment in I.A.No.765 of 1992 was filed by the mother of the petitioners and it was renumbered as I.A.No.829 of 1993 after the same was transferred to the Principal District Munsif, Kumbakonam and the same was allowed and later it was dismissed because consequential steps were not been taken by the mother of the petitioners.

(iii) The trial court failed to note that on 16.02.1999 the suit itself was dismissed for default. The suit was restored to file and at the time of restoring the suit the learned District Munsif, Kumbakonam has not restored the application in I.A.No.829 of 1993, which is a curable defect on the part of the District Munsif, Kumbakonam. Again, the suit was transferred to the District Munsif, Thiruvaiyaru and the mother of the petitioners without taking steps to restore the I.A.No.829 of 1993, has filed a fresh application for amendment in I.A.No.254 of 2004 and I.A.No.255 of 2004. Both the petitions were dismissed on 21.09.2004.

(iv) The trial Court failed to note that the suit itself was dismissed for default on 18.07.2005 and the civil revision petitions in C.R.P.Nos.720 and 734 of 2005 were dismissed on 05.09.2007 on the ground that the civil revision petitions become infructuous. The petitioners were brought on record only in the year 2009. After the demise of their mother, the suit was restored on 02.09.2009 on payment of cost. At the time of restoring the suit, the interlocutory application was not restored.

6. On the side of the petitioners, it is stated that an opportunity for the petitioner to carry out the amendment, has to be given and the order of dismissing the amendment petition is to be restored.

7. None appeared on behalf of the respondents, though the name of the respondents were printed.

8. It is seen that the suit was filed by the mother of the petitioner. During the pendency of the suit, the mother of the



petitioners had filed a petition to amend the plaint in I.A.No.765 of 1992 and after the suit was transferred to the District Munsif Court, Kumbakonam, the same was renumbered as I.A.No.829 of 1993 and the same was allowed. Thereafter, the petitioner failed to carry out the amendment and on 09.02.1999 a dismissal order was passed for non compliance. Subsequently, the suit was dismissed for default on 16.02.1999. It is seen that the suit itself was dismissed for default and the petitioners filed two separate petitions to implead the legal heirs of the deceased Mariammal and to carry out the amendment. Both the petitions were dismissed and the civil revision petitions against these petitions were also dismissed by this court, since no suit was pending at the time.

9.It is seen that the plaintiff had filed an application in I.A.No.55 of 1994 to implead the legal heirs and the same was allowed on 17.03.1995. Further, the plaintiff had filed an application in I.A.No.321 of 1995 to amend the injunction petition and the plaint and the same was allowed on 17.04.1997. It is seen that after the dismissal of the the amendment application in I.A.No.829 of 1993, the petitioner had filed two applications in I.A.No.254 of 2004 and I.A.No.255 of 2004 and both petitions were dismissed.

10.It is seen that I.A.No.829 of 1993 was dismissed for default for not carrying out the amendments within the time. It is seen that suit is pending for the past 28 years. The plaintiff has filed so many interlocutory applications in order to drag on the matter. Now, the main suit filed by the petitioner is for the declaration of title over the 'A' scheduled property and for possession over the 'B' and 'C' scheduled properties. Hence, the petitioner has not established the merits in I.A.No.354 of 2010, the petition was rightly dismissed by the District Munsif, Thiruvaiyar.

11.It is seen that after the dismissal of I.A.No.829 of 1993, without filing a restoration petition, the petitioners filed second petition in I.A.No.255 of 2004 for the same relief. Thereafter the second petition was dismissed. After the dismissal of the I.A.No.255 of 2004, the petitioners have come forward with this petition to restore I.A.No.765 of 1992 after a lapse of 11 years. Allowing this petition after a lapse of 11 years will cause prejudice to the rights of the respondents. The petitioners are at liberty to file a fresh suit on the same cause of action.

12.The reasons stated in the revision petition are not sufficient enough to interfere with the order passed by the Trial Court.



13. With the above observations, the Civil Revision Petition is dismissed with liberty to the petitioners to file a fresh suit on the same cause of action. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar ()

// True Copy //

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Sub Assistant Registrar (CS)

vsg

To

1. The District Munsif,
Thiruvaiyaru

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.CHANDRASEKAR, Advocate (SR-10071[F] dated
04/03/2020)

C.R.P. (PD) (MD) .No.2335 of 2010
and
M.P. (MD) .No.1 of 2010

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_NR (08.07.2020) 5P 4C