



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No. 2434 of 2015 (NPD)

WEB COPY

1. Guruvammal ...Petitioner/Petitioner/3rd defendant
2. Vijayalakshmi
3. Mareeswari
4. Karuppasamy
5. Nagaraj
6. Mareeswaran ... Petitioners 2 to 6/Petitioners/Proposed
Defendants-4 to 8
vs.

1. Krishnammal
2. Oorathaammal
3. M. Rajeswari
4. S. Kaliammal
5. M. Veluchamy
6. P. Banumathi
7. Perumalsamy
8. M. Kathirvel
9. M. Srinivasan ...Respondents/Respondents/
Plaintiff Nos.2 to 10

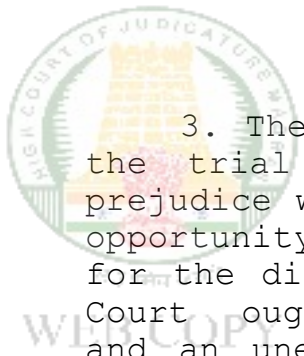
PRAYER : Petition filed under Section 115 of Civil Procedure Code, against the Fair and Decreetal Order passed in I.A. No. 688 of 2013 in O.S. No. 80 of 2005 on the file of the learned District Munsif, Sivakasi, dated 13.04.2015.

For Petitioners : Mr. M. Ashok Kumar
For Respondents : Mr. V. Srinivasan

ORDER

This petition has been filed against the Fair and Decreetal Order passed in I.A. No. 688 of 2013 in O.S. No. 80 of 2005 on the file of the learned District Munsif, Sivakasi, dated 13.04.2015.

2. The respondents herein have filed a suit in O.S. No. 80 of 2005 for declaration and for permanent injunction. The first revision petitioner herein has filed a petition in I.A. No. 689 of 2013 in O.S. No. 80 of 2005 on the file of the learned District Munsif, Sivakasi, under Section 5 of C.P.C to condone the delay of 752 days in representing exparte order set aside petition and the same was dismissed on 13.04.2015 by the learned District Munsif, Sivakasi. Against the said order, the present Civil Revision Petition has been filed.



3. The grounds raised by the civil revision petitioner is that the trial Court ought to have allowed the petition since no prejudice will be caused to the respondents as they will have every opportunity to cross examine the petitioner and put forth his case for the dispose of the case in their favour on merits. The trial Court ought to have seen that the petitioner is a senior citizen and an uneducated lady and only if a chance is being given for defending the suit the real truth will come out before the Court of law. The trial Court ought to have condoned the delay by putting the petitioner on terms and there will be no loss and hardship to the respondents. Therefore, prayed to set aside the Fair and Decreetal Order passed in I.A. No. 688 of 2013 in O.S. No. 80 of 2005 on the file of the learned District Munsif, Sivakasi, dated 13.04.2015.

4. The learned counsel appearing for the respondents herein reiterated the contentions set out in the counter affidavit filed in I.A. No. 688 of 2013 in O.S. No. 80 of 2015 before the Court below.

5. Considering the facts of the case, the respondents/plaintiffs have filed a suit against three defendants. D1 died leaving behind D-2 & D-3 as legal heirs. D-2 also died on 11.10.2010 leaving behind D-4 to D-8. The defendant Nos.4 to 8 are not added as parties in the suit. The delay is only representation delay. On 22.07.2005, suit itself dismissed for default. To restore the suit, the respondents/plaintiffs have filed a petition along with Section 5 of CPC petition in I.A. No. 639 of 2010 was allowed on 20.01.2011. To restore the suit in I.A. No. 45 of 2011 was filed and the suit was restored. In that legal heirs of D-2 not added. Again, 10.03.2011, exparte decree was passed. On that day, D-1 & D-2 are not alive. Therefore, legal heirs are necessary parties to contest the suit. D-3 should report the death of D-1 & D-2 before the Court below, but he failed to inform. Therefore, the legal heirs are necessary parties to adjudicate the suit. On the date of passing exparte decree D-1 & D-2 are not alive. Death certificates also filed in the legal heir petition. Exparte decree was passed on the dead persons. Hence, it is necessary to allow the representation petition.

6. Accordingly, the Civil Revision Petition is allowed. The learned District Munsif, Sivakasi is directed to dispose of the petition which was filed under Section 5 of C.P.C., as expeditiously as possible.

Sd/-

Assistant Registrar (P & A)

// True Copy //



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To

1. The District Munsif, Sivakasi.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.M.ASHOK KUMAR, Advocate (SR-26874[F] dated
22/12/2020)

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18.12.2020

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sv2 (CO)

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