



C.R.P. (NPD) Nos. 1265 & 1266 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13.12.2021**

CORAM:

**THE HONOURABLE Mr. JUSTICE S.S.SUNDAR**

C.R.P. (NPD) Nos.1265 & 1266 of 2019

1. Rukmani
2. Kamesh
3. Mahesh
4. Kalaiselvi

...Petitioners in both petitions

Versus

1. M.Alexander
2. S.T.Mariya Selva Priya

...Respondents in both petitions

Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 16.08.2018 made in I.A. Nos.380 & 381 of 2017 in O.S. No.169 of 2011, on the file of the District Munsif Court, Tambaram and allow the above Civil Revision Petitions.

For Petitioners : Mr. Ravichandran Sundaresan  
(in both petitions)

For Respondents : No appearance  
(in both petitions)

### **COMMON ORDER**

C.R.P. No.1265 of 2019 is directed against the order in I.A. No.380 of 2017 in O.S. No.169 of 2011 on the file of the District Munsif, Tambaram.



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C.R.P. No.1266 of 2011 is directed against the order in I.A. No.381 of 2017

in O.S. No.169 of 2011, on the file of the District Munsif, Tambaram. Since both the Civil Revision Petitions are connected, both are taken up together and disposed of by this common order. Notice was served on all the respondents in these petitions. No counsel has entered appearance for respondents.

2. The respondents as plaintiffs filed a suit in O.S. No.169 of 2011 on the file of District Munsif Court, Tambaram, for permanent injunction restraining the defendant or his men from interfering with their peaceful possession and enjoyment of the scheduled mentioned property. During the course of trial, an Advocate Commissioner was appointed to note down the physical features and there was some dispute with regard to identity and measurements. It is stated by the revision petitioners that the advocate commissioner in his report has pointed out that the plaintiffs have encroached into a portion of the property that belonged to the defendants. Therefore, it appears that the defendants filed a written statement with a counter claim to grant mandatory injunction directing the plaintiffs to remove the compound wall put up by the plaintiffs encroaching into the property of the defendants. The plaintiffs in the suit withdrew the suit. It is under these circumstances, the defendants, in order to prosecute his counter claim, filed an application seeking permission to pay sufficient Court fee on the



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counter claim which according to him was omitted by mistake. The Second Application in I.A. No.381 of 2017 was filed to proceed with the counter claim for mandatory injunction. The applications filed by the revision petitioners was opposed by the first respondent on various grounds. The lower Court dismissed both the applications on the ground that the petitioners did not take steps to pay the Court fee within a reasonable time.

3. Learned counsel for the petitioners submitted that the petitioners have filed counter claim and that they cannot abandon their claim on withdrawal of suit. Learned counsel further submitted that non-payment of Court fee along with the papers is inadvertent. Further, the counsel submitted that the consequences of dismissal of counter claim will curtail their right once for all.

4. Having regard to the factual averments and the sequence of events indicated by the learned counsel for the petitioners, this Court is of the view that the delay in payment of Court fee is not due to any wilful or calculated attempt to cause prejudice to the respondents. The petitioners have properly explained the reasons for the delay. Since the delay is not alarming and it has been explained properly by the petitioners, this Court is unable to sustain the order of the lower Court in dismissing the applications.



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5. Accordingly, the orders passed by the learned District Munsif Court, Tambaram in I.A. Nos.380 & 381 of 2017 in O.S. No.169 of 2011, are hereby set aside and these Civil Revision Petitions are allowed. The revision petitioners are granted three weeks time, to pay Court fee, from the date of receipt of copy of this order. No costs.

**13.12.2021**

Index: Yes/ No  
Speaking Order / Non-Speaking Order  
bkn

Copy to:

The District Munsif Court, Tambaram.



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**S.S.SUNDAR, J .,**

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