

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

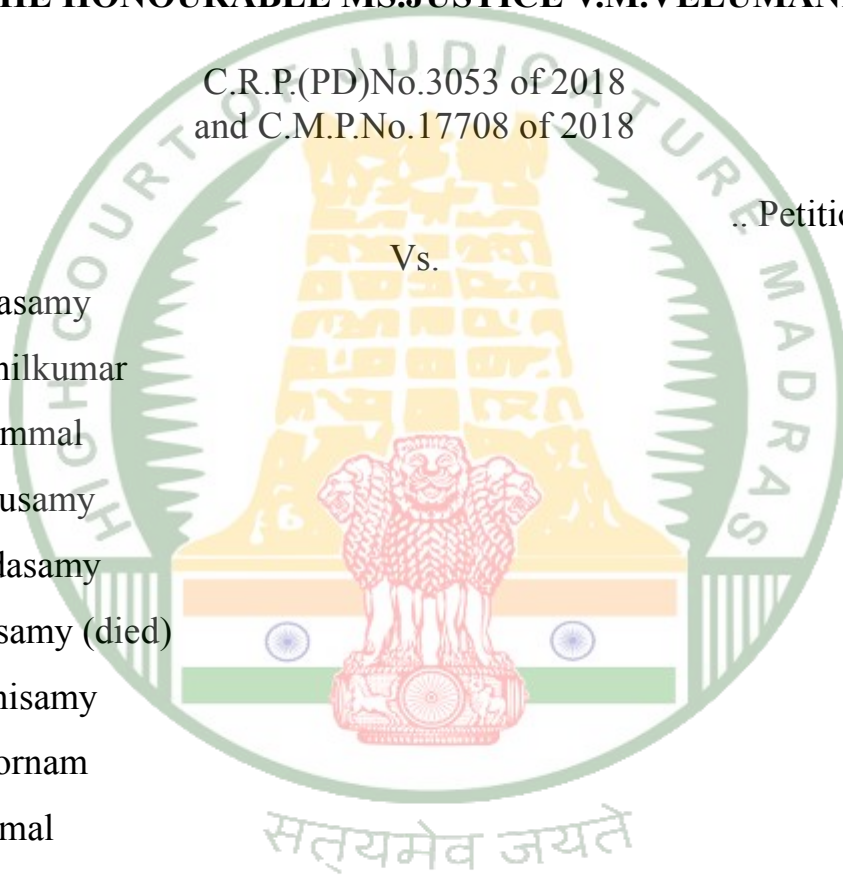
C.R.P.(PD)No.3053 of 2018
and C.M.P.No.17708 of 2018

N.Mani

.. Petitioner

Vs.

- 1.P.Kandasamy
- 2.K.Senthilkumar
- 3.Palaniammal
- 4.P.Kuppusamy
- 5.K.Kandasamy
- K.Kandasamy (died)
- 6.K.Palanisamy
- 7.Sampoornam
- 8.Kaliammal
- 9.M.Rajendran
- 10.Komarasamy
- 11.S.K.Loganathan
- Arthanari (died)
- A.Thangarasu (died)



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12.V.Rangasamy

13.R.Thangavel

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 14.03.2018 made in I.A.No.20 of 2017 in O.S.No.120 of 2011 on the file of the Sessions Court (Fast Track Mahila Court), Namakkal.

For Petitioner : Mr.A.Sundaravadhanan

For R1 to R3 : Mr.R.Marudhachalamurthy

For R6, R10 to R13: No appearance

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 14.03.2018 made in I.A.No.20 of 2017 in O.S.No.120 of 2011 on the file of the Sessions Court (Fast Track Mahila Court), Namakkal.

2.The petitioner is plaintiff and respondents are the defendants in O.S.No.120 of 2011 on the file of the Sessions Court (Fast Track Mahila Court), Namakkal. The petitioner filed the said suit for specific

performance of agreement of sale, possession and permanent injunction restraining the respondents 1 to 3, 6 to 8, 15 and 16 from alienating or encumbering the suit properties. The respondents 1 to 3 filed written statement and are contesting the suit. The petitioner filed I.A.No.20 of 2017 to condone the delay of 1209 days in filing the petition to bring on record the legal heirs of the deceased 6th defendant viz., K.Kandasamy.

3.According to the petitioner, during pendency of the suit, 6th defendant died on 27.06.2013 leaving behind his wife, son and daughter as his legal heirs. The wife, proposed 17th defendant is also legal heir of the deceased 6th defendant. The legal representatives of the deceased 6th defendant are to be impleaded in the suit as defendants and filed petition to set aside the abatement, to implead the wife of the deceased 6th defendant as 17th defendant in the suit.

4.The respondents 1 to 3 filed counter affidavit and stated that the petitioner is well aware of the death of 6th defendant on 27.06.2013 and

that his legal heirs are to be impleaded in the suit. The 6th defendant died leaving behind his son, daughter and wife by name Kaliasammal. There is no 17th defendant in the suit. The petitioner has not explained each and every day delay in filing petition to implead the legal heirs of the deceased 6th defendant and prayed for dismissal of the said I.A.

5.The learned Judge considering the averments made in the affidavit, counter affidavit and judgment of the Hon'ble Apex Court reported in **2011 SAR (Civil) 262 SC Lanka Venkateswarule (D) by legal heirs vs. State of Andhra Pradesh and others**, dismissed I.A. holding that the petitioner has not approached the Court with clean hands, as the present application was dismissed for default on 06.06.2017, it was restored to file by filing an another application in I.A.No.280 of 2017 on 06.01.2018 and in view of the above, there is no reason for the delay on the side of the petitioner.

6. Against the said fair and decretal order dated 14.03.2018 made in I.A.No.20 of 2017 in O.S.No.120 of 2011, the petitioner has come out with the present Civil Revision Petition.

7. The learned counsel appearing for the petitioner contended that the defendants 7 and 8, K.Palanisamy and Sampooram are son and daughter of the deceased 6th defendant. In view of the legal heirs of the deceased 6th defendant are already on record, the suit is not abated. The petitioner has mistakenly filed three applications to condone the delay in filing petition to set aside the abatement, set aside the abatement and bring on record the legal heirs of the deceased 6th defendant instead of filing petition to bring on record the wife of the deceased 6th defendant as his legal heir. For impleading wife of the deceased 6th defendant, the learned Judge ought to have returned I.A. instead of dismissing application filed by the petitioner. The learned Judge is not right in dismissing I.A., when the suit itself is not abated due to death of 6th defendant as two other legal heirs are on record as 7th and 8th defendants

and prayed for allowing I.A. and Civil Revision Petition and submitted that I.A. may be allowed on terms.

8.The learned counsel appearing for the respondents 1 to 3 contended that the petitioner has not given any reason for the delay in filing the application. The petitioner has not filed any proper application to bring on record the wife of the deceased 6th defendant. The learned Judge considering the pleadings and judgment of the Hon'ble Apex Court, rightly dismissed I.A. There is no error in the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

9.Though notice has been served on the respondents 6 and 10 to 13 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

10.The respondents 4, 5, 7 to 9 were set exparte before the trial Court. In the C.R.P., notice sent to the respondents 4 and 9 have been

returned with an endorsement as 'not claimed', notice sent to the respondents 5, 7 and 8 have been returned with an endorsement as 'refused' and their names are printed in the cause list. Since the respondents 4, 5, 7 to 9 were set exparte before the trial Court, fresh notice to the respondents 4, 5, 7 to 9 are dispensed with.

11. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 1 to 3 and perused the entire materials on record.

12. From the materials available on record, it is seen that the petitioner has filed suit for specific performance and other reliefs against sixteen defendants. Pending suit, the 6th defendant K.Kandasamy died on 27.06.2013. The petitioner filed three applications to condone the delay in filing petition to set aside abatement, set aside abatement and bring on record the wife of the deceased 6th defendant as 17th defendant in the suit. The application filed to condone the delay of 1209 days was numbered as

I.A.No.20 of 2017. The respondents 1 to 3 filed counter affidavit and stated that the petitioner has not given any reason for the delay in filing petition to bring on record within the time limit and has not explained each and every day's delay. From the materials, it is seen that I.A.No.20 of 2017 was dismissed for default on 06.06.2017. The petitioner filed another I.A.No.280 of 2017 and the I.A.No.20 of 2017 was restored to file on 06.01.2018. The 7th defendant Palanisamy is the son and 8th defendant Smt.Sampoornam is the daughter of the deceased 6th defendant Kandasamy. In view of the fact that the legal heirs of the deceased 6th defendant are already on record, the suit is not abated. The petitioner filed three applications to condone the delay in filing petition to set aside abatement, set aside abatement and bring on record the legal heir of the deceased 6th defendant. In fact, the application to condone the delay in filing petition to bring on record the other legal representative of the deceased 6th defendant is the proper application. When some of the legal heirs of the deceased 6th defendant are already on record, they can represent the estate of the deceased. In view of the above position, the

application to condone the delay in filing petition to set aside abatement is modified as application to condone the delay in filing petition to bring on record the left out legal heir, the wife of the deceased 6th defendant Kaliasammal, as his legal heir.

13.From the materials on record, it is seen that the petitioner is not diligent enough to take steps to implead the said Kaliasammal, wife of the deceased 6th defendant and to record that the defendants 7 and 8 are the legal heirs of the deceased 6th defendant. By condoning the delay in filing petition, the respondents 1 to 3 will not be prejudiced as two of the legal heirs of the deceased 6th defendant are already on record and they can represent the estate of the deceased 6th defendant. Due to the failure on the part of the petitioner to take steps within the time limit and earlier, the present application was dismissed for default and on filing another application by the petitioner, the present I.A. was restored to file on 06.01.2018 and submission of learned counsel for petitioner, the petitioner must be put on cost. The application to condone the delay in

filing petition will be allowed on payment of cost of Rs.15,000/- (Rupees Fifteen Thousand only) by the petitioner to Mr.R.Marudhachalamurthy, the learned counsel appearing for the respondents 1 to 3, within a period of four weeks from the date of receipt of a copy of this order. On such payment, the learned Judge is directed to number the I.A. filed by the petitioner to bring on record the wife of the deceased 6th defendant Kaliasammal as the defendant in the suit, if it is otherwise in order and pass orders on merits. If the petitioner fails to pay the cost within the time limit, the Civil Revision Petition shall stand dismissed and the order of the learned Judge dated 14.03.2018 made in I.A.No.20 of 2017 shall be confirmed.

14. With the above directions, the Civil Revision Petitions stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No

Internet: Yes/No

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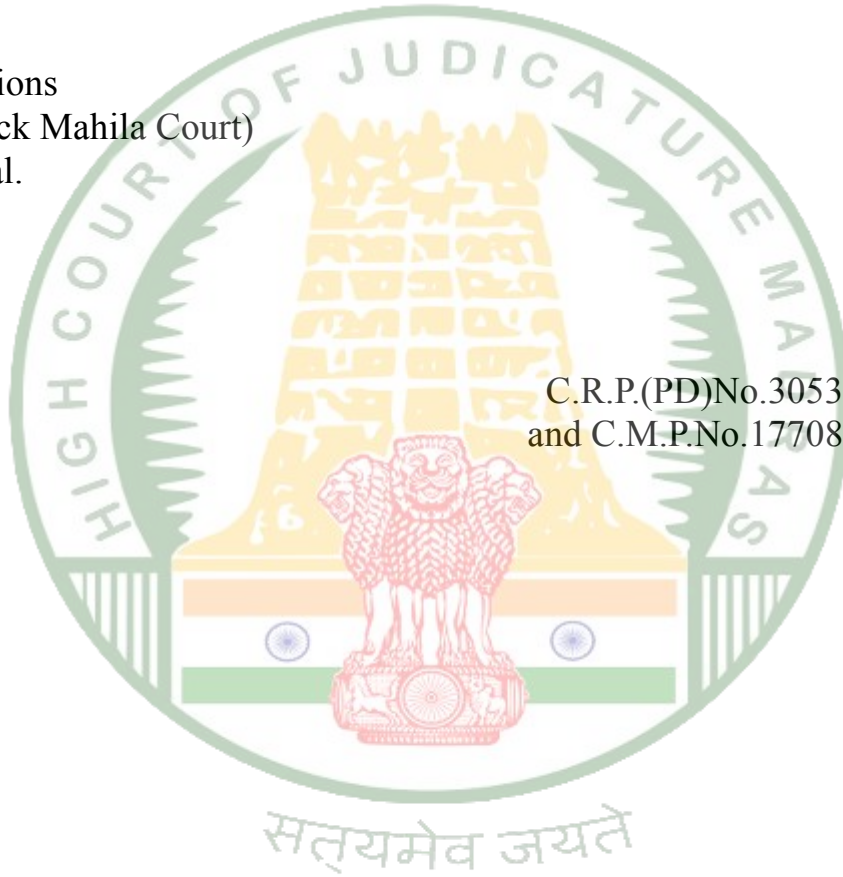
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V.M.VELUMANI,J.

kj

To

The Sessions
(Fast Track Mahila Court)
Namakkal.



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