



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.02.2021**

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P (NPD) (MD) NO.2390 OF 2012

and

M.P (MD) Nos.2 and 3 of 2012

M.F.Ashma Beevi (died) ...1st Petitioner/Petitioner/
1st Defendant

1.S.Abdul Khader

2.A.Thahir

3.A.Mohammed Niyas

4.A.Mohammed Bilal

5.A.Fathima

(Cause- title accepted vide order of this Court made in
M.P(MD)No.1 of 2012 in C.R.P(MD)SR.No.48945 of 2012,
dated 2.11.2012) : 2 to 6 Petitioners/Third Party/Third
Party/Legal Heirs of deceased first
Defendant

.vs.

P.Habirus Ribai :Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the
Civil Procedure Code praying this Court to set aside the fair and
decretal order made in I.A.No.351 of 2011 in O.S.No.593 of 2004,
dated 08.08.2012, on the file of the Principal District Munsif
Court, Tenkasi, by allowing this Civil Revision Petition.

For Petitioners : Mr.D.Nallathambi

For Respondent : Mr.A.Haja Mohideen

O R D E R

This Civil Revision Petition is filed challenging the order
dismissing the application filed under Section 5 of the Limitation



2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The legal heirs of the first defendant, who suffered a decree for recovery of money, based on a mortgage, wherein, the decree was passed on 31.05.2004, exparte. Admittedly, notice was served on the revision Petitioner to the address in Tenkasi, whereas, the defendant was residing in Madurai. However, admittedly, in E.P.No.157 of 2006, notice was served on the sole defendant. Despite service of notice, no steps have been taken by the sole defendant to set aside the exparte decree and an application to set aside the exparte decree with a delay of 2309 days was filed in I.A.No.351 of 2011, after a period of six years. In the E.P also, it is stated that the property was brought to sale and the sale has taken place and the same was confirmed and Sale Certificate was also issued. All the above proceedings were within the knowledge of the Petitioner before filing of Section 5 application.

4.Therefore, when there is no just and sufficient cause furnished by the revision petitioner and he has been taking part of the execution proceedings, the Principal District Munsif Court has rightly dismissed the application and there is no reason to interfere with the same and the same is confirmed and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsn

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Principal District Munsif,
Tenkasi.

WEB COPY

+1 CC to M/s.D.NALLATHAMBI, Advocate SR-6197[F] dated 19/02/2021

ORDER MADE IN
C.R.P (NPD) (MD) NO.2390 OF 2012
and
M.P(MD)Nos.2 and 3 of 2012
19.02.2021

DKS (CO)

TR(03.03.2021) 3P 3C