



WEB COPY

W.P. (MD) No. 7381 of 2019, etc.,

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE **M.M. SUNDRESH**

AND

THE HONOURABLE MRS. JUSTICE **S. ANANTHI**

W.P. (MD) No. 7381 of 2019

and

C.M.P. (MD) No. 3606 of 2018 in C.R.P. (MD) No. 512 of 2010

and

C.R.P. (MD) No. 512 of 2010

and

C.M.P. (MD) No. 5375 of 2019

and

M.P. (MD) Nos. 2 of 2010 & 2 of 2014

M. Mohamed Ali : Petitioner in WP(MD).7381 of 2019
Mahaboob Jan : Petitioner in CRP(MD).512 of 2010
Mahaboob Jan (Died)
1.M.Salima
2.M.Mohamed Ali
3.Syed Ali Fathima
4.Sikkander Jerina Banu
5.Dashina Begam
: Petitioners in CMP(MD).3606 of 2018
in CRP(MD).512 of 2010

Vs.

- 1.The Registrar General,
Madras High Court of Judicature,
Chennai.
- 2.The Registrar Judicial,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Commissioner of Police,
Madurai City, Madurai.
- 4.M.Beema
- 5.Abdul Wahab



6.A.D.Ganesamoorthy

7.G.Pandiyarajan

8.The Bar Council of Tamil Nadu and Puducherry,
High Court Campus, Chennai - 600 104.

9.Bagath Singh : Respondents in WP(MD).7381 of 2019
[R.9 is *suo-motu* impleaded vide order dated 13.11.2019]

1.M.Beema

2.M.Gowther

3.M.Anarkali

4.J.Francis Mari Susila

5.Kanthimathi Ammal

6.M.Kulandaivelu

7.K.Senthil Ammujam

8.Hajara

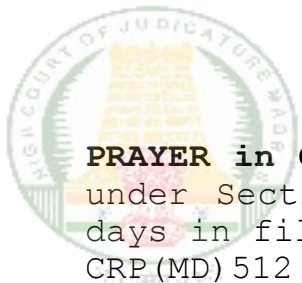
9.Jagar Hussain

10.Jaffer Ali

11.Subaitha Banu : Respondents in CRP(MD).512 of 2010
and
in CMP(MD).3606 of 2018
in CRP(MD).512 of 2010

PRAYER in WP(MD).7381 of 2019: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents 1 & 2 to register a criminal case with the third respondent for investigation of the petitioner's representation dated 25.09.2018 relating to the filing of a change of vakalat by forging the signature of the petitioner's father Mr.Mahaboob Jan and his Advocate Mr.M.P.Senthil and withdrawing CRP(MD)No.512 of 2010 on the file of this Court.

PRAYER in CRP(MD)512 of 2010: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair order passed in I.A.No.126 of 2009 in O.S.No.7 of 2004 on the file of the I Additional District Judge, Tirunelveli, dated 12.02.2010.



PRAYER in CMP(MD) 3606 of 2018 in CRP(MD) 512 of 2010: Petition filed under Section 5 of the Limitation Act to condone the delay of 421 days in filing the petition to rehear the Civil Revision Petition in CRP(MD) 512 of 2010.

WP (MD) 7381/2019:

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.K.Samidurai for R.1 & R.2

Mr.K.P.Krishnadoss,
Special Government Pleader for R.3

No appearance for R.4 & R.6

Mr.R.Anand for R.5

Mr.VR.Venkatesan for R.7

Mr.Niranjan S.Kumar for R.8

Mr.M.Rajaguru for R.9

CRP. (MD) 512/2010 &

CMP. (MD) 3606/2018 in CRP. (MD) 512/2010:

For Petitioner(s) : Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Palanivelayutham for R.1 to R.3

COMMON ORDER

(Order of the Court was made by **M.M.SUNDRESH, J.**)

This case has got a checkered history, at least before this Court.

2. As against the dismissal of the condone delay petition filed to set aside the *ex-parte* preliminary decree, the civil revision petition has been filed, which was dismissed as withdrawn on 16.09.2016. The civil miscellaneous petition in CMP.(MD)No.3606 of 2018 has been filed to condone the delay of 421 days in filing the petition to rehear the civil revision petition, on the premise that without any instructions, the civil revision petition was withdrawn by playing fraud. The grievance of the petitioner is that this was done clandestinely by fabrication and tampering of records. Seeking to take appropriate action against the private respondents, based on the allegations made, the writ petition has been filed.



3 When the matters are listed before us, on the request of the respective Counsel, we asked the contesting respondents' Counsel on the submission made by the learned Counsel appearing for the petitioners that the civil revision petition will have to be allowed, as what the petitioners seek is reworking of the respective shares under the Muslim Law.

4. The learned Counsel appearing for the contesting respondents submitted that without prejudice to their contentions, on merits, before the Court below, the civil revision petition may be ordered. The learned Counsel also submitted that the allegations and averments made in the affidavit filed in support of the writ petition will have to be eschewed.

5. We do not wish to compound the issue any further. In view of the aforesaid submission made before us by all the contesting respondents' Counsel, we deem it appropriate to allow CMP(MD)3606 of 2018 in CRP(MD)512 of 2010 and thereafter, the very civil revision petition itself. Accordingly, CMP(MD)3606 of 2018 is ordered and the delay is condoned. Consequently, CRP(MD)512 of 2010 is taken on file and the same is accordingly, allowed, by setting aside the order dated 12.02.2010, made in I.A.No.126 of 2009 in O.S.No.7 of 2004, by the learned I Additional District Judge, Tirunelveli. As a result, the application in I.A.No.126 of 2009 in O.S.No.7 of 2004 before the Court below stands ordered and the ex-parte preliminary decree also stands set aside. The parties are at liberty to raise all the contentions before the trial Court and the trial Court shall decide the same, on its own merits and in accordance with law.

6. Since a consent order has been passed, the allegations raised in the affidavit filed in support of the writ petition are eschewed.

7. In fine, the writ petition stands closed. The civil miscellaneous petition in CMP(MD)3606 of 2018 and the civil revision petition stand ordered. There shall be no order as to costs. Consequently, all the pending miscellaneous petitions stand closed.

Sd/-

Assistant Registrar(P & A)

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/ /2021

Sub Assistant Registrar(CS)

gk



To

1. The Registrar General,
Madras High Court of Judicature,
Chennai.

2. The Registrar Judicial,
Madurai Bench of Madras High Court,
Madurai.

3. The Commissioner of Police,
Madurai City, Madurai.

4. The I Additional District Judge,
Tirunelveli.

+1 CC to M/s. A.D. KRISHNAMOORTHY, Advocate (SR-13002[F] dated
23/03/2021)

+1 CC to M/s. NIRANJAN. S. KUMAR, Advocate (SR-13060[F] dated
23/03/2021)

+2 CC to M/s. G. PRABHU RAJADURAI, Advocate (SR-13189 & 13190[F]
dated 24/03/2021)

+1 CC to M/s. SPL GP (SR-13300[F] dated 24/03/2021)

**W.P. (MD) No. 7381 of 2019
and
C.M.P. (MD) No. 3606 of 2018
and
C.R.P. (MD) No. 512 of 2010
23.03.2021**

SSS (CO)
TR(22.04.2021) 5P 10C