



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2021

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD)No.2009 of 2019

and

C.M.P. (MD)No.10345 of 2019

Mayalagan (Died)
1.Periyakaruppan
Raja @ Madarasan (Died)
Veeran (Died)
2.Govindan
3. Anguthan
Nalli (Died)
4. Parathaman
5. Narayanan
6. Pitchaimmal
7. Parameshwari
8. Minor Karunagaran
9. Minor Nallamani
10. Minor Abinaya
11. Minor Nagarajan

...Petitioners/Respondents/
Defendants

(Minor petitioners 8 to 11
represented by their mother and
natural guardian 7th petitioner)

vs.

K.Palanichamy (Died)
1. Kandavelu
2. Kadarnath
3. Shanmugam
4. Thirugnansmbantham

... Respondents/Petitioners/
Legal Heirs of Plaintiff

Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order dated 20.08.2019 made in Execution Petition in E.P.No.162 of 2015 in O.S.No.1157 of 2000 on the file of Principal District Munsif Court, Madurai Town.

For Petitioners : Mr.R.Krishnan
For Respondents : Mr.M.Kannan

**ORDER**

This revision petition has been filed to set aside the order dated 20.08.2019 made in Execution Petition in E.P.No.162 of 2015 in O.S.No.1157 of 2000 on the file of Principal District Munsif Court, Madurai Town.

2.The deceased respondent/plaintiff K.Palanichamy filed O.S.No.1157 of 2000 against the revision petitioners/defendants for declaration, mandatory injunction and recovery of possession. The suit was dismissed by judgment and decree dated 20.11.2006 and challenging the same, the plaintiff filed A.S.No.17 of 2007 which was allowed, against which, the petitioners preferred S.A(MD).No.153 of 2014 before this Court and it was dismissed for default. Thereafter, the respondents/legal heirs of the deceased plaintiff K.Palanichamy, filed E.P.No.162 of 2015 and the same was allowed by impugned order dated 20.08.2019, against which, the petitioners/defendants have filed the present revision petition.

3.The learned counsel appearing for the petitioners would state that the Executing Court ought to have seen that the dismissal of S.A(MD)No.153 of 2014 was not on merits and it was only for default and the petitioners herein are taking effective steps to file necessary application to restore the Second Appeal. He would further state that the deceased respondent/plaintiff had six legal heirs who were parties in the second appeal, but only 4 legal heirs had filed the E.P and therefore, the E.P has to be returned for non joinder of necessary parties. Thus, he would pray to set aside the impugned order.

4.Heard the learned counsel appearing for the petitioners as well as the respondents.

5.Perusal of record in S.A(MD)No.153 of 2014 shows that the said second appeal was admitted on 07.02.2014 and a notice was ordered returnable by four weeks and interim order was granted till then. The Court notice sent to the sole respondent/plaintiff returned with an endorsement that the respondent expired. Thereafter, this Court by order dated 20.08.2015, directed the appellant to implead the legal heirs of the respondent. The appellant took steps in M.P(MD)SR.Nos.35269 and 35270 of 2014 to condone the delay of 126 days in filing the petition to bring the legal representatives of the deceased respondent on record and to implead the legal heirs of the sole respondent respectively. The said petitions were returned for certain compliance granting 10 days time to comply with the defects, but the above return was neither complied with nor the appellant took steps for compliance, inspite of the intimation notice for such returns put up in the Registry's notice board more than twice and therefore, it was posted before the Court for passing orders on 21.03.2016 under the caption 'Appeal



Examiners Section Default Cases' and by order dated 21.03.2016, time was granted upto 05.04.2016 for taking steps in M.P(MD)SR.Nos.35269 and 35270 of 2014, in default, it has been stated that the said petitions will be rejected automatically and struck off from the file of this Court. As steps were not taken, M.P(MD)SR.Nos.35269 and 35270 of 2014 were rejected as per the order dated 20.08.2015 and the second appeal also got dismissed. On 14.09.2018, the appellant came forward with the petition in C.M.P.No.9036/2018 to condone the delay of 1088 days in filing the restoration petition to restore the second appeal and this Court by an order dated 11.12.2018 dismissed the condone delay petition by passing a very detailed order and therefore, as of now no second appeal is pending. At this stage, the respondents have filed E.P.No.162 of 2015 and the E.P has been ordered. The learned counsel for the petitioners would state that the sole respondent had six legal heirs who were parties in the second appeal, but only 4 legal heirs had filed the E.P and therefore, the E.P has to be returned for non joinder of necessary parties, but here in the present case, the respondents have stated that the legal heirs were impleaded as per the order of this Court in I.A.No.220/2015 by virtue of a will executed by the decree holder dated 09.07.2010. Admittedly, the revision petitioners did not file any appeal against the order in I.A.No.220/2015 and the said order has become final. The other two legal heirs did not get any share as per the will. The petitioner has not taken any effective steps to prosecute the matter and now they come forward with the present revision petition which is only a clear abuse of process of the court and therefore, the order of the learned Judge does not warrant any interference.

6.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala/pkn

To

The Principal District Munsif, Madurai Town.

+1 CC to M/s.M.KANNAN, Advocate (SR-9387[F] dated 08/03/2021)

ORDER MADE IN

C.R.P. (MD)No.2009 of 2019

DATED : 08.03.2021

SSS(CO)

TP(29.03.2021) 3P 3C

<https://hcservices.ecourts.gov.in/hcservices/>