



C.R.P.No.2597 of 2021
and C.M.P.No.19246 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.2597 of 2021

and C.M.P.No.19246 of 2021

1.S.Karthikeyan

2.S.Mohanasundaram

...Petitioners

Vs.

C.S.Palanisamy (Deceased)

1.M.Venkatachalamoorthy

2.Village Administrative Officer,
Pandiampalayam Village,
Perundurai Taluk.

3.Tahsildar,
Perundurai Taluk,
Perundurai.

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 16.10.2019 passed in I.A.No.542 of 2018 in O.S. No.164 of 2010 on the file of the District Munsif Cum Judicial Magistrate, Perundurai.



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For Petitioners : Mr.M.V.Venkataseshan
For R2 & R3 : Dr.S.Suriya
Additional Government Pleader

ORDER

The present Civil Revision Petition is filed against the fair and decreetal orders dated 16.10.2019 passed in I.A.No.542 of 2018 in O.S. No.164 of 2010 on the file of the District Munsif Cum Judicial Magistrate, Perundurai.

2.The revision petitioners/plaintiffs are the petitioners in I.A.No.542 of 2018 in O.S.No.164 of 2010 on the file of the District Munsif Cum Judicial Magistrate, Perundurai. They filed the suit to set aside the sale deed dated 25.01.2010 purported to have been executed by the second defendant in favour of the first defendant as null and void ; and for a permanent injunction restraining the defendants 3 & 4 from effecting mutation of revenue records in respect of the suit property in the name of the first defendant; and for a permanent injunction restraining the first defendant from creating any encumbrance over the suit property and for

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costs.

3.The first defendant filed his written statement and other defendants remained absent and were set *ex parte*.

4.During the pendency of the suit, the first defendant died and the plaintiffs filed an application under Order XXII Rule 9 and Section 151 of the Code of Civil Procedure to bring on record the legal heirs of the deceased first defendant. Along with the said application they also filed a petition under Section 5 of the Limitation Act in I.A.No.542 of 2018 to condone delay of 335 days in filing the petition to set aside the order of abatement caused due to the death of the first defendant. The learned District Munsif Cum Judicial Magistrate, Perundurai, vide his orders dated 16.10.2019 dismissed the application by observing thus :

"Heard perused. On perusal of the material documents it is seen that there have been delay of 335 days delay in presenting the application. On going through the affidavit and petition filed by the petitioner. No specific reason has been stated for the reason for delay the day



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to day delay has not been explained. It clearly goes to show the shallowness on the petitioner side. Hence no sufficient cause found, this petition is dismissed."

The above orders clearly shows that the learned District Munsif Cum Judicial Magistrate, Perundurai, has not applied his mind while setting aside the order of abatement caused due to the death of the first defendant.

5.Heard Mr.M.V.Venkataseshan, learned counsel appearing for the revision petitioner and Dr.S.Suriya, learned Additional Government Pleader appearing for the respondents 2 & 3.

6.Though notice was served on the first respondent and his name was printed in the cause list, there is no representation on behalf of the respondent, either in person or through a counsel.

7.It is pertinent to point out that the first defendant is the sole contesting defendant in the suit in O.S.No.164 of 2010 and his legal heirs should be impleaded as parties in the suit to proceed with the trial of the



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case. The trial Court should have taken into consideration this aspect before dismissing the petition in I.A.No.542 of 2018. The order of the trial Court is also cryptic in the sense that it is not a speaking order.

8.In the facts and circumstances, the Civil Revision Petition is allowed. The fair and decreetal orders in I.A.No.542 of 2018 in O.S. No.164 of 2010 dated 16.10.2019 on the file of the District Munsif Cum Judicial Magistrate, Perundurai, is set aside. The learned District Munsif Cum Judicial Magistrate, Perundurai, is directed to take on file the petition filed by the revision petitioners to implead the legal heirs of the deceased first defendant and pass the orders in accordance with law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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R. HEMALATHA, J.
mtl

To

- 1.The District Munsif Cum Judicial Magistrate, Perundurai.
- 2.The Section Officer, VR Section, High Court, Madras.

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