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C.R.P. No. 4093 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.4093 of 2012

and

M.P. No. 1 of 2012

Dakshinamurthi (died)

2. Prabavathy,
S/o. Late Dakshinamurthi

3. Shenemuga Priya,
D/o. Late Dakshinamurthi

4. Rajalakshmy
D/o. Late Dakshinamurthi

5. D.Sundaresh @ Santhosh,
S/o. Late Dakshinamurthi

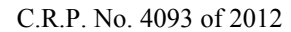
(Petitioners 2 to 5 brought on record as
LRs of deceased sole Petitioner vide
court order dated 15.07.2019 made in
CMP. Nos.13691, 13693 & 13698/2019)

... Petitioners

Vs.

Vasanth,
W/o. Kathavarayan

... Respondent





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the same, erroneously ordered to take the suit on file. Accordingly, the suit was numbered as O.S.No. 81 of 2010 on the file of Sub-Judge, Puducherry.

Challenging the said order, the defendant preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioners submitted that the trial court ought not to have taken the suit on file, since because the plaintiff not filed the application to condone the said delay along with the plaint and not explained properly for about 2296 days. But, now the fact reveals as stated by the plaintiff's counsel that the suit is taken on file and in that suit, written statement was filed by the defendant much prior to the filing of this Civil Revision Petition. Though the plaintiff not proceeded to register the suit, he has not raised his objection much earlier at the time of filing of written statement. Having filed written statement and the suit was taken on file, now, he raised objection, as such is highly belated one.



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4. Admittedly, the suit is ripe for trial and since this Civil Revision Petition was filed, it is pending from the year of 2012. Furthermore, on perusal of written statement, which is annexed in one of typed set of papers reveals that in the written statement, in para 5, the defendant raised objection with regard to numbering the suit. Therefore, the defendant is entitled to raise his objections before the trial court because he has already raised the same in the written statement. Therefore, lapse of procedure should not be appreciated, otherwise, the very right to defend the case of the party would be defeated. The case of the plaintiff is that he is the owner of property and approached the court to declare the title. Thus, he is entitled to raise all his defence by adducing oral and documentary evidence during trial. If he is not given a chance to defend the case, his valuable right will be defeated.

5. In the result, this Civil Revision Petition is dismissed and the order passed by the trial judge in I.A. unnumbered of 2010 is confirmed. Liberty is granted to the defendant to raise all his defence before the trial court



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during trial. No costs. Consequently, connected Miscellaneous Petition is also closed.

02.11.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp
To

Sub-Judge,
Puducherry.



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T.V.THAMILSELVI, J.

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