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C.R.P.(PD) No.1839 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P.(PD) No.1839 of 2019
& CMP.No.12171 of 2019

K.Aruldass

...Petitioner

Vs.

1.K.Radhamani

2.A.Santhosh

3.A.Raja

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Fair and Final order dated 11.02.2019 passed in I.A.No.265 of 2018 in I.A.No.494 of 2012 in O.S.No.40 of 2009 on the file of the learned Subordinate Judge of Nilgiris at Udhagamandalam.

For Petitioner	: Mr.Radhakrishnan for M/s.S.Kingston Jerold
For Respondents	: Ms.Priyanaka for M/s. R. Gowri

ORDER

This Civil Revision Petition is directed against the order passed by the learned Subordinate Judge, Nilgiris at Uthagamandalam dated 11.02.2019 in I.A.No.265 of 2018 in O.S.No.40 of 2009.



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2. The revision petitioner is the plaintiff in the suit in O.S.No.40 of 2009 on the file of the Subordinate Court, Nilgiris, Uthagamandalam. The suit is for recovery of a sum of Rs.1,50,000/- towards damages with interest and for permanent injunction restraining the defendant and his family member in any manner trespassing or interfering with the plaintiff's possession and enjoyment of the suit schedule property.

3. During the pendency of the suit, the suit was decreed ex parte on 09.10.2010. Therefore, the defendants in the suit filed an application in I.A.No.494 of 2012 to set aside the ex parte decree passed on 09.03.2010 under Order 9 Rule 13 of the Code of Civil Procedure. The said application is contested on merits. It appears that during the pendency of the application to set aside the ex parte decree in I.A.No.494 of 2012, the first defendant in I.A.No.494 of 2012 died on 14.07.2007, leaving behind the other petitioners in the application as his legal heirs. Therefore, the respondents filed an application in I.A.No.217 of 2018 to condone the delay of 235 days in filing the petition to impleade the legal heirs. The respondents filed I.A.No.265 of 2018 to set aside the abetment and to permit the respondents to impleade them as proposed petitioners in the application originally filed to set aside the ex parte decree. Both the applications were allowed and aggrieved by the order in



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I.A.No.265 of 2018, allowing the petition to implede the legal heirs of the deceased defendant, the above Civil Revision Petition is filed.

4. The revision petitioner has raised several grounds while raising objections as to the maintainability of the petition before the lower Court. The learned counsel appearing for the petitioner submitted that the petition to set aside the abetment, without an application under Section 5 of the Limitation Act, is not maintainable. Referring to Order XXII Rule 10-A of the CPC, it is further contended that the defendants ought to have filed an application to set aside the abetment and to bring on record the legal heirs of the deceased within thirty (30) days from date of knowledge and that the applications filed belatedly are not maintainable.

5. It is quite surprising to note that the petitioner has come up with the above Civil Revision Petition focusing that the application filed under Order XXII Rule 10-A of CPC is liable to be dismissed on various technical grounds. The defendants have suffered an ex parte decree. When the petition was filed to set aside the ex parte decree, during the pendency of such application, the first defendant died and therefore the legal heirs of the deceased have filed the applications. One of the applications filed by the respondents was to condone the delay in filing impleading petition. When the applications were filed to condone the delay in bringing on record the legal representatives and to set aside the abetment caused by the death of the first



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defendant, the lower Court has allowed the applications keeping in mind the interest of parties. When the lower Court has exercised discretion, the revision petitioner has come up by way of this revision petition by raising some technical issues, which, according to this Court, are unsustainable. In view of the admitted facts, may be there are some discrepancies in quoting the provisions, however, the real object behind the application is to prosecute the application filed by the respondents under Order 9 Rule 13 to set aside the ex parte decree.

6. This Civil Revision Petition is vexatious. There is nothing to indicate that revision petitioner is put to any prejudice. In the absence of any legal injury to the petitioner, the petitioner has approached this Court with unsustainable grounds just to protract the proceedings. As a result, this Civil Revision Petition is dismissed. Connected miscellaneous petition is closed. No costs.

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Index: Yes/No

Speaking order/Non-speaking order



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To

Subordinate Judge of Nilgiris,
Udhagamandalam.



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S.S.SUNDAR, J.,

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