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CRP (MD) Nos.2179 and 2248 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) Nos.2179 and 2248 of 2022

Pothurajan (died)

1.Bommi

2.Minor Ilakkiya

3.Minor Priya

4.Minor Bhavani

[Minor petitioners 2 to 4 are represented through their mother and natural guardian 1st petitioner herein]

... Petitioners

Vs

M.Suruli

... Respondent

PRAYER: Civil Revision Petitions are filed under Section 115 of the Civil Procedure Code, to call for the records relating to the fair and decreetal order passed in IA.Nos. 517 and 520 of 2018 in OS.No.190 of 2011 dated 21.08.2019 on the file of the District Munsif Court, Theni and set aside the same by allowing these civil revision petitions.



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For Petitioners : Mr.V.Chandrasekar
for M/s.D.Selvanayagam
For Respondent : Mr.V.R.Venkatesan

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ORDER

The petitioners are the legal heirs of the deceased sole defendant in OS.No.190 of 2021. The said suit was filed by the respondent/ plaintiff for declaration and recovery of possession. The sole defendant passed away on 10.09.2014. However it was not brought to the notice of the Court and the court proceeded with the case and decreed the suit by its judgment and decree dated 19.12.2014 by setting the defendant as ex-parte. The legal heirs of the deceased defendant filed two interlocutory applications in IA.Nos.517 and 520 of 2011 to condone the delay of 1316 days in filing the application to set aside the abatement caused due to the death of the sole defendant and to condone the delay of 1348 days in filing the application to set aside ex-parte decree. The said applications were dismissed. Aggrieved over the same, the present civil revision petitions are filed.



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2. The learned Counsel for the petitioners submit admittedly on the date of the judgment and decree dated 19.12.2014, the sole defendant was not alive and hence, the judgment and decree passed as against the dead person is of nullity and therefore, opportunity must be provided to the petitioners / legal heirs of the defendant to contest the suit.

3. The learned Counsel for the respondent submits that after verification they found that sole defendant was not alive as on the date of the judgment and decree on 19.12.2014. However, the trial Court may be directed to proceed with the suit as on 10.09.2014, by providing an opportunity to the petitioners.

4. This Court considered the rival submissions and perused the materials placed on record.

5. The suit in OS.No.190 of 2011 was filed in the year 2011. The sole defendant in the suit passed away on 10.09.2014. The suit was decreed ex-parte by judgment and decree dated 19.12.2014. It is stated that only after



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receiving the summons in the execution proceedings, the petitioners had the knowledge of the ex-parte decree and therefore, they being legal heirs of the deceased defendant have filed these interlocutory applications to condone the delay in filing the application to set aside the abatement caused due to the death of the defendant and to condone the delay in filing the application to set aside the ex-parte decree. Since on the date of judgment and decree, the defendant was not alive, the decree is of nullity and necessarily it has to be set aside. The petitioners claim that they had the knowledge of the ex-parte decree only on receipt of notice in the execution proceedings, the delay can be condoned and they must be provided with an opportunity to defend the suit.

6. In view of the above, these petitions are allowed. The orders challenged in these petitions are set aside. The trial Court shall proceed with the suit in accordance with law. No costs.

28.11.2022

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To
The District Munsif,
Theni.

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