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CRP(MD) No.143 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2022

CORAM:

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

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Thankamma (Died)

1.Sobana Bai

2.Saradha Bai

Jayaprakash (Died)

3.Udaya Prakash

4.Justin Prakash

5.V.Maria Danishlas

6.Santhakumari

7.Bellgin

8.Bilbino

9.Minor Beula Jeba Lifni

Rep. by natural guardian / 6th petitioner

: Petitioners

Vs.

Chandrapakash (Died)

Rethinam (Died)

Sundara Bai (Died)

1.Devanesam



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2.Belix

3.Priya

4.Elizabeth

Dharmaraj [Died]

: Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records in connection with the fair and decreetal order dated 04.04.2016 in E.A.No.370 of 2014 in E.P.No.212 of 1994 in O.S.No.717 of 1998, on the file of the Principal District Munsif Court, Kulithurai, and set aside the same.

For Petitioners : Mr.H.Lakshmi Shankar

For Respondents : Mr.N.Dilipkumar
for R.1 to R.3

No appearance for R.4

ORDER

As against the orders passed by the learned Principal District Munsif, Kulithurai, in E.A.No.370 of 2014 in E.P.No.212 of 1994 in O.S.No.717 of 1998, dated 04.04.2016, the present civil revision petition is filed by the plaintiffs / decree holders.



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2.The petitioners have filed the suit in O.S.No.717 of 1988 for partition and the same was decreed in their favour. Final decree was also passed on 18.03.1994. Thereafter, the petitioners have filed E.P.No.212 of 1994 and the same was dismissed for default on 08.06.2009. After five years, the petitioners have filed E.A.No.370 of 2014 to set aside the dismissal order passed in E.P.No.212 of 1994. The Executing Court, by referring that this application is filed after five years and that there is no provision for filing an application under Section 5 of the Limitation Act in the execution proceedings, dismissed the application. Aggrieved over the same, the petitioners have moved the instant revision.

3.When the revision petition is taken up for hearing today, learned Counsel appearing for respondents 1 to 4 fairly submitted that in view of the decision of this Court in ***N.Rajendran v. Shriram Chits Tamil Nadu Pvt., Ltd., [2011 (6) CTC 268]***, the order impugned could not be sustained.



4. In the decision in **N. Rajendran's** case (supra), this Court has held as follows:-

"41. Section 97 of the Amendment Act 104 of 1976 repealed only those State amendments, which were inconsistent with the amendments introduced under Act 104 of 1976. Similarly, Section 32 of the Amendment Act 46 of 1999 also made it clear that any amendment made or any provision inserted in the principal Act by a State Legislature or High Court shall also stand repealed, except insofar as it is consistent with the provisions of the principal Act. In other words, the State or High Court Amendments, which were inconsistent with the amended provisions, were directed to stand repealed.

42. Act 22 of 2002 contained a provision for repeal and savings under Section 16. Section 16(1) was in pari materia with Section 32(1) of Act 46 of 1999, both of which were identical to Section 97(1) of Act 104 of 1976. Therefore, what should be taken to have been repealed would be those provisions of the State or High Court Amendment, which became inconsistent with the amendments introduced. There is nothing on record to show that the Proviso to sub-rule (3) of Rule 105, which would now become the Proviso to sub-rule (3) of Rule 106 of Order 21, is, in any way, inconsistent with the amendments introduced either in 1976 or in 1999 or even in



2002. So long as the Proviso under sub-rule (3) is not shown to be inconsistent with any of the amendments, it cannot be stated to have been repealed under the Central Amendment Acts.

43. Therefore, I am of the view that the order of the Court below, refusing to entertain the Application on the ground that it was filed beyond 30 days and that there was no power to entertain the same, is not in accordance with law. Hence, the impugned order of the Court below is set aside and the Court below is directed to number the Application and take it up for hearing."

5. In view of the aforesaid decision of this Court, the order impugned in this revision dated 04.04.2016 stands quashed and the matter is remanded back to the Executing Court for fresh consideration, in accordance with law. It is open to the parties concerned to file additional documents, if required, for the just adjudication of the proceedings.

The civil revision petition stands allowed in the above terms. No costs.

Index : Yes / No
Internet : Yes
gk

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To

The Principal District Munsif,
Kulithurai.



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B. PUGALENDHI, J.

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