



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

CRP.No.3929 of 2019

K.Aumugam (died)

1.T.A.Venugopal

2.T.A.Paramasivam

3.N.Vijayalakshmi

A.Marathal (died)

4.Ayyasamy Gounder

5.Kalisamy

6.Palaniammal

.. Petitioners

Vs

T.R.Palanisamy

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of CPC, against the fair and decretal order passed in I.A.No.1211 of 2017 in O.S.No.1511 of 2005 dated 23.07.2018 by the learned Principal District Munsif, Coimbatore.

For Petitioners : Mr.T.Venugopal for
Mr.A.Mohamed Ismail

For Respondent : Mr.M.Senthamizh Selvan

ORDER

This revision arises against the dismissal of I.A.No.1211 of 2017 in O.S.No.1511 of 2005. O.S.No.1511 of 2005 is a suit for permanent injunction presented by the civil revision petitioners against one Palanisamy.



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2. To the said suit, a detailed written statement was presented and the issues were framed and the matter was listed for trial. The first plaintiff namely one K.Arumugam entered into the witness box as P.W.1 and marked Exs.A1 to A7 on 16.03.2016 to substantiate his case. All of a sudden, he passed away on 29.04.2016 and therefore, the matter was adjourned for taking steps.

3. I find from the suit cause title that the question of taking steps would not arise, because the legal heirs of Arumugam namely T.A.Venugopal, T.A.Paramasivam were already on record as plaintiff Nos.2 and 3. His daughters were also on record. Nevertheless, the suit was dismissed on the ground, steps had not been taken. When the legal heirs are already on record, the Court below erred in dismissing the suit for not taking steps. All that was required to be done was to receive a memo from the plaintiffs that the legal heirs are already on record and the suit ought to have been proceeded from that stage.

4. The father and the first plaintiff, having passed away, the suit was dismissed for default on 30.06.2011 for not taking steps. To restore the same, an application was filed along with condonation of delay.



5. The suit is one for bare injunction. The plaintiffs claim to be in possession of the property. Therefore, the cause of action arises every time the plaintiff's possession is interfered with. The Court below took up an application for condone the delay and dismissed the same on the ground it is unbelievable that the father alone was looking after the case.

6. Heard Mr.T.Venugopal, learned counsel representing Mr.A.Mohamed Ismail. Though Mr.Senthamizh Selvan has filed vakalat for the respondent, he had not appeared before me.

7. The learned counsel for the petitioners would submit that from the very fact that the father had entered in the witness box would show that he was a person who was taking care of the matter and therefore, there is genuineness in the case pleaded before the trial Court for condonation of delay.

8. I see considerable force in the said submission. The narration of the facts is not in dispute. The father had entered into witness box and had also co-operated for disposal of the case. While marking the documents, he passed away soon thereafter. The dismissal of the suit by the Court for not taking



steps is legally flawed because the legal heirs are already on record. When the legal heirs are already on record, the question of dismissing the suit for taking steps does not arise at all.

9. In the light of the above, the order passed in I.A.No.1211 of 2017 in O.S.No.1511 of 2005 is set aside. The delay of 315 days is condoned. The learned trial Judge is requested to take up the application filed to restore the suit and allow the same. Thereafter, the learned trial Judge shall restore the suit and endeavour to dispose of the suit within a period of eight months from the date of restoration.

10. The costs for condonation of delay is Rs.5,000/- (Rupees Five Thousand only), which the plaintiffs shall pay to the defendant within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above direction, this Civil Revision Petition stands allowed. No costs.

26.09.2023

Index: Yes/No
Speaking order/Non-speaking order
vkr



To :
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The Principal District Munsif, Coimbatore.



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V.LAKSHMINARAYANAN,J.,

vkr

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