



C.R.P.No.1379 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.No.1379 of 2023

Tharangambadi Taluk,
Srikali Munsif Kattucheri
Chenaithalaivar Chettiar Sangam
rep. By its Treasurer T.Kumaravel
Mayiladuthurai

... Petitioner

Vs.

Kunju (deceased)
Muthu (deceased)
1. Babu
2. Ganesh
3. Devi
4. Suresh

... Respondents

Civil Revision Petition filed under Article 227 Constitution of India to
set aside the fair and decreetal order passed in E.A.No.6 of 2021 in
unnumbered E.P.No. in O.S.No.111 of 1983 dated 12.01.2023 on the file of
the learned District Munsif cum Judicial Magistrate, Tharangambadi.

For Petitioner : Mr. A.Muthukumar
M/s P.Srividhya
Mr.S.Hariharan

ORDER

The present Civil Revision Petition is filed to set aside the fair and
decreetal order passed in E.A.No.6 of 2021 in unnumbered E.P.No. In



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O.S.No.111 of 1983 dated 12.01.2023 on the file of the learned District Munsif cum Judicial Magistrate, Tharangambadi.

2. The brief facts of the case is as follows:-

The petitioner, who is the plaintiff has preferred O.S.No.111 of 1983 for a declaration in respect of A schedule property and for injunction in respect of B schedule properties. The said suit was decreed as prayed for on 27.02.1990. As against the same, the respondents have preferred A.S.Nos.20 and 21 of 1990, the said appeal suit was dismissed on 30.09.1994 confirming the orders passed in O.S.No.111 of 1983. Aggrieved against the same, the ancestors of the respondents have preferred S.A.Nos.580 and 581 of 1995 before this Court and by Judgment dated 24.02.2006 this Court, dismissed the said Appeals. The petitioner preferred E.P in the year 2017 to execute the decree passed in O.S.No.111 of 1983. Pending E.P., the petitioner has preferred E.A.No.6 of 2021 seeking permission to reconstruct the bundle, viz., E.P., on the ground that the leading Lawyer, Mr.Thiayagarajan, who is the learned counsel on record had died and the main E.P., was taken for complying certain defects pointed out by the court below, thereby the same was lost and could not be found out. The said E.A., was dismissed on 12.01.2023 on the ground that permission cannot be afforded in view of mistake done by the counsel. Aggrieved against the same, the petitioner has preferred the present



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Revision.

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3. The learned counsel for the petitioner would submit that the court below failed to see that the counsel, Mr.Thyagarajan, a leading civil practioner of Sirkali, represented the decree holder and filed execution petition and passed away on 14.08.2018 after prolonged illness of cancer and that therefore, the learned District Munsif ought to have allowed the petition and ordered for reconstruction of records.

4. The learned counsel for the petitioner contends that the court below erred in not looking into either the court records or certified copies of the CR Register produced by the decree holder and therefore, the order of the learned District Munsif cum Judicial Magistrate, Tharagambadi is erroneous.

5. Lastly, the learned counsel for the petitioner contends that the court below failed to see that the decisions reported in **1989 (1) LW 195 [Dr.K.Srinivasan Vs. P. Srinivasan]**, was reversed on appeal by the Division Bench of this Court reported in 1990 (1) LW 63 [K.Srinivasan Vs. P.Srinivasan].

6. Heard the learned counsel for the petitioner and perused the



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documents placed on record.

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7. Upon going through the documents placed on record, it is seen that originally suit, which was filed by the petitioner in O.S.No.111 of 1983 for declaration in respect of A schedule property and for injunction in respect of B Schedule properties was decreed in favour of the petitioner and the same was challenged by the respondents upto this Court by way of S.A.Nos.580 and 581 of 1995 and the same was dismissed and the Judgment and decree passed in O.S.No.111 of 1983 dated 27.02.1990 was confirmed.

8. Subsequently, execution petition was proceeded by the petitioner. Thereafter, the said petition was returned to comply with the certain defects on 29.03.2018 and the same was received by Mr.Thiagarajan, learned counsel for the petitioner on record. However, on account of the ill health of Mr.Thiayagarajan, suffered a lot and died on account of cancer on 29.08.2018. Therefore, he could not comply with the defects and the said petition was some how misplaced. Though a search was being launched in all the places, the said petition cannot be found out and all the efforts ended in vain. Therefore, pleaded to reconstruct the said petition. The court below has not granted permission to reconstruct the bundle by stating that the permission for reconstruction would be granted only if the



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bundle is misplaced by the court, thereby dismissed the petition.

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9. Considering the facts and circumstances of the present case and taking note of the fact that the suit filed by the petitioner was decreed in favour of the petitioner and the same was upheld by the appellate court as well as this Court and the fact that the execution petition was lost at the advocate, viz., Mr.Thiayagarajan's office, which was received from the court for carrying out certain defects and the fact that the said advocate died by facing lots of challenges on account of cancer and keeping in mind the Judgment of the Hon'ble Division Bench of this Court relied on by the learned counsel for the petitioner referred supra, this Court is of the opinion that the petitioner shall be granted one more opportunity, accordingly, the order passed by the court below in EA No.6 of 2021 dated 12.01.2023 is set aside and the court below is directed to reconstruct the papers and proceed with the case in accordance with law.

In view of the above, the present Revision is allowed. No costs.

21.09.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

The District Munsif cum Judicial Magistrate,

<https://www.mhc.tn.gov.in/judis>



Tharangambadi.

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V.BHAVANI SUBBAROYAN J.

ssd

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