



C.R.P.(NPD).No.3479 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2023

CORAM

MR.JUSTICE N.SESHASAYEE

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V.Natarajan (died)

- 1.N.Padma
- 2.N.Sachidanandam
- 3.M.Sadanandi
- 4.N.Vaiyapuri
- 5.N.Bavatharini
- 6.N.Hamsika

... Petitioners

Vs.

1.Pavathal

Chidambara gounder (died)
Ramasamy gounder (died)

2.R.Nallamuthu gounder
3.R.Sengottaian

S.Kumurasamy gounder (died)
R.Viswanathan (died)

4.E.P.Muthusamy gounder

Karuppanna gounder @ Kuttappallian (died)
C.Rajagopal (died)



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5.C.Sundaramoorthy

C.Chandrasekaran (died)

6.Rajammal @ Chellammal

7.Saroja @ Sarojini

8.Subramaniam

9.Palaniammal

10.Arukkani

11.Ekambaram

12.Lalli @ Lalitha

13.Chandra

14.R.Banumathi

15.V.Sudha

16.S.Geetha

... Respondents

PRAYER: Petition filed under Article 227 of Constitution of India, seeking to set aside the order dated 21.03.2014 made in E.A.No.160 of 2007 in unnumbered E.P in C.F.R.No.832 of 1992 in O.S.No.405 of 1982, on the file of the Principal District Munsif, Erode.

For Petitioners 3 to 6 : Mr.G.S.Suvethan

For R4 : Mr.M.Guruprasad

For R1 to R3 and
R5 to R16 : No Appearance



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ORDER

The revision petitioner herein is a decree holder in O.S.No.405 of 1982. The suit was laid for declaration of title and for mandatory injunction by the father of the revision petitioners. The said suit was laid against fourteen defendants and it came to be decreed exparte on 16.03.1988. Challenging the decree, defendants 2, 3 and 4 preferred A.S.No.84 of 1988, whereas the defendants 7, 8 and 10 have laid A.S.No.72 of 1988. Both these first appeals came to be dismissed by a common judgment dated 23.03.1989. Challenging the said decree of the first appellate Court, the 4th defendant alone preferred S.A.No.1304 of 1989. On 27.09.2002, that too came to be dismissed.

2.Subsequent to the dismissal of the first appeals, on 21.01.1992, the plaintiff laid an Execution Petition for giving effect to the decree for mandatory injunction and for evicting the defendants from the property. However, the same was returned on 28.01.1992. Thereafter, it was again represented on 27.02.1992 and the same was again returned on 03.03.1992 on the ground that a specific provision of Order 21 C.P.C, which is required to be followed is not stated and there were atleast seven returns for the same reason.



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3.Ultimately, after the dismissal of the second appeal preferred by the 4th defendant in S.A.No.1304 of 1989, the said execution petition was again represented on 07.06.2006. Now, the correct provision of law was stated as Order 21 Rule 32 C.P.C. But, the plaintiff has passed away on 12.01.2004, which is about 1 ½ years since the dismissal of S.A.No.1304 of 1989, and the final representation was made by his legal representatives. Along with this, they took out an application in E.A.No.160 of 2007, for condonation of delay of 5097 days. In the affidavit filed in support of this application, it is averred that they were not aware of the E.P proceedings at all, and that they came to know about the suit and the Execution Petition required to be represented only after the demise of their father. This was not accepted by the Execution Court, which contended that the plaintiff / Decree Holder had been negligent in prosecuting the same.

4.Heard Mr.G.S.Suvethan, the learned counsel for the revision petitioners / the petitioner in Execution Petition and Mr.M.Guruprasad, who appeared for the contesting sole 4th respondent.



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5. At the outset, this Court is disappointed to record that the Execution Petition ought not to have been returned by the Court for not mentioning the provision of law since it is the job of the Court to execute the decree, and any such omission cannot be a reason for the Court to oblige its responsibility to entertain an application for execution. It is true that the applicant could have been far too diligent and might have been even negligent in not providing an innocuous fault in omitting to quote the right provision of law in Column 10 of the Execution Petition, but that at any rate cannot cost the revision petitioners / Decree Holders their right to execute the decree.

6. The learned counsel for the 4th defendant, with her usual vehemence resisted it as an excessive indulgence on the part of the Court to condone the delay of 5097 days when the negligence is palpable on the face of the Execution Petition, and the multiple returns the Court has given for the same purpose.

7. This Court finds from the impugned order that all the JDs cited by the DH had been served with the notice of E.A.No.160 of 2007, but only the 4th defendant had made his appearance before the Execution Court to resist the application. What is



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however, significant is that the Execution Petition is not laid against the 4th defendant. This Court, therefore, considers that the 4th defendant does not have any locus standi to resist the present application and also the revision, and hence cannot advance an argument in anticipation of a possible Execution Petition against him at a later point of time.

8. So far as the condonation of delay is concerned, it is inordinate, and the delay can be partly attributed to the negligence of the respondents. But as outlined earlier, the reason for which the Execution Petition was returned a few times by the Court itself is not tenable, and to repeat, it is the job of the Court to execute the decree even ignoring such minor issues like quoting the correct provision of law. However, for the inconvenience caused to the Court with the negligence of the revision petitioners, this Court slaps a cost of Rs.50,000/- on the revision petitioners.

9. While this Court directed the learned counsel for the revision petitioners to pay 50% of the cost to Adyar Cancer Institute, the learned counsel offered to obtain books worth Rs.25,000/- which may be useful to young lawyers. The same is recorded with appreciation.



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10.This Civil Revision Petition is allowed on payment of cost of Rs.25,000/- (Rupees Twenty Five Thousand only) to the Adyar Cancer Institute (WIA), West Canal Road, Gandhi Nagar, Adyar, Chennai-600 020 and the remaining amount of Rs.25,000/- to procure books which may be useful to some junior advocates and the same may be done on or before 08.06.2023.

11.Post the matter on 08.06.2023 under the caption "for reporting compliance".

12.04.2023

Anu
Index:Yes/No
Internet:Yes/No
Speaking /Non Speaking Order

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The Principal District Munsif, Erode.



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N.SESHASAYEE.J..

Anu

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