



C.R.P.Nos.3193, 3204 &3194 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Revision Petition.Nos.3193, 3204 & 3194 of 2023
and
Civil Miscellaneous Petition Nos.19731 of 2023

Rajalakshmi (Died)
1.Jagdish Chandran

2.Sahasranamam ... Petitioners in all CRPs
Versus

Ponnaiyammal @ Nachiyammal (Died)

Gurusamy (Died)

Balakrishnamurthy (Died)

1.P.Rathinam

2.R.Sakthivel

3.Rajeswari

Karupanna Gounder (Died)

4.P.Viswanathan

Venkatammal (Died)

5.Sadasivam



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Saravanan (Died)

6.Janaki

7.Ardhanareeshwaran

8.S.Madheswaran

9.Sulochana

10.Abirami

11.Jothimani

12.Madhivadhani

13.Aarthi

...Respondents in all CRPs

Prayer in CRP No.3193 of 2023: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and decreetal order dated 24.02.2023 in I.A.No.13 of 2022 in I.A.No.9 of 2022 in O.S.No.2 of 1994 and consequently allow the I.A.No.13 of 2022.

Prayer in CRP No.3204 of 2023: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and decreetal order dated 24.02.2023 in I.A.No.12 of 2022 in O.S.No.2 of 1994 and consequently allow the I.A.No.2 of 2022.

Prayer in CRP No.3194 of 2023: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and decreetal order dated 24.02.2023 in I.A.No.14 of 2022 in I.A.No.10 of 2022 in O.S.No.2 of 1994 and consequently allow the I.A.No.14 of 2022.



In all CRPs:

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For Petitioners : Mr.T.Saikrishnan

COMMON ORDER

These three revisions arise against the common order passed by the Sub Court, Sankari.

2. Originally the suit in O.S.No.2 of 1994 was filed by Rajalakshmi/deceased before the Sub Court, Sankari praying for division of suit properties into four equal shares and allotment of one such share to the plaintiff and other reliefs.

3. During the pendency of the Suit, Rajalakshmi died. The present petitioners were made as plaintiffs and they continued to litigate the suit filed by their mother. During the pendency of the suit, the 9th defendant died and her legal representatives were sought to brought on record. During such course, a delay of 5364 days occurred. Seeking to condone the delay, petitioners have filed petitions to condone the delay and same were dismissed by the learned Trial Judge. Challenging the said order of dismissal, present Civil Revision Petitions are filed.



WEB COPY 4. Heard both sides and perused the materials available on record.

5. It is a case of the revision petitioners/plaintiffs that during the pendency of the suit, the 7th defendant died and defendant Nos.9 and 11 were brought on record as the legal representatives of deceased 7th defendant. Since defendant Nos.9 and 12 did not appear before the Court for examination, they were declared as exparte. In the meantime, 9th defendant namely Venkatammal expired and her legal representatives were sought to be impleaded in the place of the deceased. According to the petitioners, only 10.04.2022 i.e., one day prior to the filing of petitions to condone the delay, they came to know about the death of 9th defendant. Seeking to condone the delay of 5364 days, petitioners filed petitions before the learned Trial Judge. The 4th defendant filed counter affidavit in the said Interlocutory Applications opposing the petitions. The said counter affidavit was adopted by the defendant Nos.5 & 6. In the counter affidavit the respondent Nos.4, 5 and 6 have stated that when the 7th defendant Karupanna Gounder's legal representatives were brought on record as defendants Nos.9 and 12. However, defendant Nos.9 and 12 did not appear before the Court and give evidence. Therefore, they were set exparte. Now the 9th defendant has also



expired. In her place, her legal representatives were sought to be brought on record. The respondents vehemently contended that when 9th defendant herself set exparte, there is absolutely no necessity for bringing her legal representatives to continue the case on her behalf.

6. Eighth defendant has filed a separate counter affidavit and contended that almost three decades have elapsed since institution of the suit and attempt of the petitioner is only to drag on the proceedings by filing one petition after another. There is absolutely no merits in the petitions filed to bring legal representative on record of someone who has already been set exparte.

7. The learned Trial Judge, observed that the evidence has been completed on both sides, case is posted for arguments and written statement have also been submitted by the defendants in the suit and at that stage the present petitions have been filed with an enormous delay of 5364 days to condone the delay in bringing the legal representatives of deceased 9th defendant.

8. The learned Trial Judge has observed that already 9th defendant has



been set exparte and no useful purpose will be served in bringing on record the legal representatives of a person who has already been set exparte.

Therefore, the learned Trial Judge has dismissed the petitions.

9. This Court does not find any merits in the submissions made by the learned counsel for the petitioners. The petitioners are all relatives. This is a suit for partition and separate possession. After the filing of the suit, some bad blood will be flowing between the parties, the fact remains that they are all relatives. The death of a relative definitely would have been shared among all the parties. It is highly unbelievable that for 5364 days petitioners were not aware of the death of the 9th defendant. Moreover, 9th defendant has already been set exparte. At least, if 9th defendants is a contesting defendants and she has let in evidence which is very crucial for deciding the suit, there may be some justification in filing the petitions to condone the delay in bringing the legal representatives of the deceased. Here is a case, where the 9th defendant has already been set exparte. The suit is for partition and separate possession. The right of the 9th defendant will flow along with the rights of other contesting defendants, since it is a family property. Therefore, there is absolutely there is no necessity for the legal representatives to come on role. There is no merit in the case of petitioners



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and especially, when the suit is ripe for arguments and defendants have submitted their written arguments. This Court does not find any error or illegality in the order passed by the learned Trial Judge.

10. Accordingly, this Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

01.09.2023

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Index:Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1. The Sub Court, Sankagiri.



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V. BHAVANI SUBBAROYAN, J.

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