



CRP.Nos.4359 of 2018 & 139 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.Nos.4359 of 2018 & 139 of 2019 and
CMP.No.23863 of 2018

CRP.No.4359 of 2018

1.K.Elumalai
2.K.Selvaraj
3.K.Kumar

... petitioners

Vs.

1.M.Balaraman
Rep. by his next friend and guardian
Elangovan
K.Loganathan(deceased)
Kesavammal(deceased)
2.Bagyalakshmi
3.Ramya
4.Priya
5.Tirumoorthy

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to struck off the above IA.No.810 of 2012 in IA.No.226 of 2000 in OS.No.885 of 1984 on the file of the District Munsif, Tambaram and connected interim applications filed in IA.No.810 of 2012 as abuse of process of court.



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CRP.Nos.4359 of 2018 & 139 of 2019

For Petitioners : Mr.Ravikumar Paul,
Senior Counsel
for M/s.Paul and Paul

For Respondents
For R2 to 5 : No appearance

R1 : Died

CRP.No.139 of 2019

1.K.Elumalai
2.K.Selvaraj
3.K.Kumar

... petitioners

Vs.

1.M.Balaraman(deceased)
Rep. by his next friend and guardian
Elangovan
K.Loganathan(deceased)
Kesavammal(deceased)
2.Bagyalakshmi
3.Ramya
4.Priya
5.Tirumoorthy

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 16.08.2018 passed in IA.No.244 of 2016 in IA.No.810 of 2012 in IA.No.226 of 2000 in OS.No.885 of 1984 on the file of the District Munsif, Tambaram.



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CRP.Nos.4359 of 2018 & 139 of 2019

For Petitioners : Mr.Ravikumar Paul,
Senior Counsel
for M/s.Paul and Paul

For Respondents
For R2 to 5 : No appearance

R1 : Died

COMMON ORDER

The civil revision petition in CRP.No.4359 of 2018 has been filed to struck off the above IA.No.810 of 2012 in IA.No.226 of 2000 in OS.No.885 of 1984 on the file of the District Munsif, Tambaram and connected interim applications filed in IA.No.810 of 2012. The civil revision petition in CRP.No.139 of 2019 has been filed to set aside the fair and decretal order dated 16.08.2018 passed in IA.No.244 of 2016 in IA.No.810 of 2012 in IA.No.226 of 2000 in OS.No.885 of 1984 on the file of the District Munsif, Tambaram.

2. Heard, the learned counsel for the petitioners. Though notice was served, no one appeared on behalf of respondents 2 to 5 before this Court in person or through pleader.

3. The petitioners are the plaintiff and defendants 3 & 4. The first respondent is the first defendant and the other respondents are the legal heirs of the



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deceased second defendant. The first petitioner filed suit for partition, in which the first deceased defendant was set exparte and preliminary decree was passed. On the strength of the preliminary decree, applications for passing final decree were filed in IA.No.534 of 1999 and IA.No.226 of 2000. Both were allowed by the trial court and final decree was passed. Thereafter, the respective possessions of the suit property was handed over to the parties. In fact, the petitioners also sold out some of the properties to third parties. After a period of twelve years, the son of the first deceased defendant filed application in IA.No.810 of 2012 to condone the delay of 3682 days in filing the petition to set aside the exparte final decree along with IA.No.811 of 2012 seeking permission to appoint him as the next friend and guardian of his father i.e. the first defendant-K.Balaraman. While pending the applications, the first defendant died. Therefore, the first respondent filed petition to set aside the abatement caused due to the death of the first defendant i.e.Balaraman.

4. On perusal of the affidavit filed in support of the said application, again the said application was filed in the name, Balaraman rep. by his next friend and guardian Elangovan i.e. one of his sons and without showing the legal heirs as parties and without filing a petition to bring the legal heirs on record. The court below allowed both the applications mechanically without even insisting to



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implead the legal heirs of the deceased first defendant and allowed the application seeking to set aside the abatement. That apart, as per the allotment of share in respect of the deceased Balaraman, his legal heirs are in possession and enjoyment of the same. Therefore, if the condone delay application is allowed and the application to set aside the exparte final decree allowed, no purpose would be served since all the parties are in possession and enjoyment of their respective shares which were allotted in the final decree passed in IA.No.534 of 1999 and IA.No.226 of 2000. Further, one of the legal heirs i.e. Elangovan representing on behalf of his father, failed to file any application to bring the legal heirs on record and simply filed application to set aside the abatement with the same cause title i.e. the deceased Balaraman rep. by his next friend and guardian Mr.Elangovan. It is not maintainable in the eye of law.

5. Therefore, the order passed in IA.No.244 of 2016 is liable to be set aside. Accordingly, the fair and decretal order dated 16.08.2018 passed in IA.No.244 of 2016 in IA.No.810 of 2012 in IA.No.226 of 2000 in OS.No.885 of 1984 on the file of the District Munsif, Tambaram is set aside and the civil revision petition in CRP.No.139 of 2019 is allowed.



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6. Insofar as the civil revision petition in CRP.No.4359 of 2018, condone delay application has been filed to condone the delay of 3682 days in filing the application to set aside the exparte final decree. As stated supra, as per the final decree, all the parties had taken possession of their respective shares and also some of the properties were sold out by the petitioners herein. Therefore, no purpose would be served if the condone delay application in filing the application to set aside the exparte final decree is allowed. That apart, the first defendant i.e. the brother of the first petitioner herein died and his legal heirs failed to file any application to bring the legal heirs on record. In fact, IA.No.811 of 2012 which was filed seeking permission to represent on behalf of the first defendant i.e. Balaraman by his next friend and guardian i.e. Elangovan was also dismissed due to the death of the said Balaraman. Therefore, the application in IA.No.810 of 2012 is hereby struck off and the civil revision petition in CRP.No.4359 of 2018 is also allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

08.02.2023

Speaking/non-speaking

Index : Yes/No

Internet : Yes

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G.K.ILANTHIRAIYAN, J.

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To
The District Munsif,
Tambaram.

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