



*C.M.A(MD)No.863 of 2019*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.06.2023**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.863 of 2019**

1.Pannimala Roman Catholic Church  
under Killiyur Parish in Vellarada,  
Neyyattinkara Taluk,  
Thiruvananthapuram District,  
Kerala State,  
Represented by its Parish Priest  
Rev.Fr.Shaji Kumar,  
Presented by Sajan D.Antony.

2.Sathianesan

3.N.Thankayyan

... Appellants/Petitioners 1,2&4/  
Appellants 1,2&4

Vs.

1.Hindu Front Organization  
in Kanyakumari District,  
Represented by its Leader G.Narayanan,  
Vivekananda Centre,  
Nagercoil.

2.The R.S.S.Organization,  
(Rashtriya Swayam Sevak Sangh),  
Represented by its leader G.Narayanan,  
Nagercoil,  
Kanyakumari District.

G.Narayanan (Died)

Krishna Panicker (Died)



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3.Surendran

4.C.Rajendran

... Respondents/Respondents 1-6/  
Respondents 1-6

5.Rev.Fr.Neettani

6.P.Micheal Nadar

... Respondents/Petitioners 3&5/  
Appellants 3&5

**PRAYER:** Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of Code of Civil Procedure, to set aside the fair and decreetal order, dated 25.06.2019 passed in I.A.No.109 of 2017 in A.S.No.47 of 2001 on the file of the learned Subordinate Judge, Kuzhithurai, Kanyakumari District.

For Appellants : Mr.G.Ramanathan

For R1 - R3 : No Appearance

For R4 : Mr.B.Rajesh Saravanan

### **JUDGMENT**

The present appeal has been filed by the appellants in a first appeal challenging the dismissal of an application filed under order 49 Rule 19 of Code of Civil Procedure.

2. The appellants herein had filed O.S.No.287 of 1985 before the District Munsif Court, Kuzhithurai for declaration of his possessory right and possession over the suit schedule property and for a



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consequential relief of permanent injunction not to disturb his possession. The plaintiff has prayed for an alternative prayer for recovery of possession.

3. The trial Court after going through the oral and documentary evidence ultimately had found that the property for which prayer has been sought for is a hillock and has proceeded to dismiss the suit on merits. Thereafter, the plaintiff had filed A.S.No.47 of 2001 before Sub Court, Kuzhithurai. The appeal was dismissed for default on 08.08.2006. The appellants had filed I.A.No.109 of 2017 to restore the said appeal. However, the restoration petition was dismissed on the ground that it is a second occasion, in which the appeal has been dismissed for default. Challenging the said order, the present appeal has been filed.

4. According to the learned counsel appearing for the appellants, the suit is for a declaration of possessory right and possession over the suit schedule properties. Therefore, the first appellate Court should not have dismissed the appeal for default, especially, when an application was filed in time to restore the said appeal. He further pointed out that the appellants 5 and 6 were present before the Court on 08.08.2016 and the Advocate could not appear on the said date and therefore, the appeal was dismissed for default. In view of the fact that the application to



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restore the appeal was filed in time, the first appellate Court ought not to have dismissed the said application. He further contended that if the appeal is restored, the appeal could be disposed of within a time frame fixed by the Court.

5. Per contra, the learned counsel for the respondent had contended that the plaintiff had filed the first appeal in the year 2001 and the said appeal was dismissed for default in the year 2004 and thereafter, it was restored. This is the second time a similar application is being filed. The first appeal was pending for the past 15 years and therefore, the first appellate Court was constrained to dismiss the appeal for the non cooperation on the part of the appellants. Hence, he prayed for sustaining the order passed by the first appellate Court.

6. I have carefully considered the submissions made on either side.

7. A perusal of the records indicate that the first appeal has been preferred by the plaintiff in A.S.No.47 of 2001 before Sub Court, Kuzhithurai. The said appeal has been dismissed for default on 13.08.2004 and it was restored on 22.07.2013. However, when the appeal was posted for arguments on 08.08.2016, again the learned



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counsel appearing for the appellants was not present and the Court had passed over the matter till 4'O clock in the evening awaiting for the learned counsel for the appellants. Even thereafter, the learned counsel for the appellants had not turned up and the first appellate Court was constrained to dismiss the appeal for default. Therefore, it is clear that the appeal that was pending from the year 2001 onwards, the appellants have not shown any interest in prosecuting the appeal and in fact, this is the second occasion where the appeal has been dismissed for default. I do not find any merits in the present appeal.

8. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs.

**15.06.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No

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To

1.The Subordinate Judge,  
Kuzhithurai,  
Kanyakumari District.

2.The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.VIJAYAKUMAR,J.**

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Judgment made in  
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15.06.2023