



C.R.P.(MD).No.2639 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(NPD)(MD)No.2639 of 2018

and

C.M.P(MD) No.11564 of 2018

Mookiahthevar @ Vellaisamythevar

**... Petitioner/1st Petitioner/1st Petitioner/
Plaintiff**

-VS-

1. Shanmugaraj
2. Arumugam
3. Raja
4. Moorthy
5. Muthuramalaingam
6. Rajalakshmi
7. Rukamani
8. Amirthavalli
9. Krishnaveni
10. Shanthi
11. Krishnasamy
12. Pethanatchi
13. Ranjitham
14. Pon Karupasamy
15. Murugesan
16. Thilagavathi
17. Veni
18. Ramalakshmi
19. Balakrishnan
20. Shenbagarasu
21. P.R.Muniasamythevar



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22. Vellapandi

23. Soundarapandi

24. Rajalakshmi

... Respondents 1 to 24/
Respondents 1 to 24/
Respondents 1 to 24/
Defendants 1 to 24

(Respondents 1 to 20, 22 and 23 herein who are all
Respondents 1 to 20, 22 and 23 in I.A.No.140 of 2017
before the trial Court were set ex-parte and hence service
of notice may be dispensed with)

25. Radhakrishnan

26. The Secretary,

Thilithani 127 Soorangudi

Primary Agricultural Cooperative Bank Ltd.,

Vilathikulam Taluk,

Tuticorin District.

... Respondents 25 and 26/
Respondents 25 and 26
Respondents 25 and 26/
Proposed Defendants 25 and 26

27. Ramasamy @ Krishnasamythevar

... 27th Respondent/2nd Petitioner/
2nd Petitioner/2nd plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India, against the fair and executable order dated 03.09.2018
passed in I.A.No.140 of 2017 in I.A.No.262 in O.S.No.9 of 2008 on the file
of the District Munsif cum Judicial Magistrate Court, Vilathikulam.

For Petitioner : Mr.V.Meenakshisundaram

For Respondents : Mr.M.Senthil Ayyanar

Government Advocate – for R26

: No appearance – for 25

:Dispensedwith – for R1 to R20, 22&23



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ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and executable order dated 03.09.2018 passed in I.A.No.140 of 2017 in I.A.No.262 in O.S.No.9 of 2008 on the file of the District Munsif cum Judicial Magistrate Court, Vilathikulam.

2. The revision petitioner is the first plaintiff before the trial Court.

3. It appears that the revision petitioner along with his brother, who is the 27th respondent in the revision petition, has filed a suit for the relief of declaration and recovery of possession. It appears that during the pendency of the suit, the 23rd defendant has executed a settlement deed in favour of his son -Radhakrishnan, in respect of the suit property. Further the first and second defendants have executed a mortgage in favour of the proposed 26th defendant qua the Secretary, Thilithani 127 Soorangudi Primary Agricultural Cooperative Bank Ltd., Vilathikulam Taluk, Tuticorin District. Therefore, the plaintiff has filed an application to implead the said Radhakrishnan as a 25th



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proposed defendant and the Secretary, as 26th proposed defendant in I.A.No. 262 of 2012.

4. He further submitted that, the said application was dismissed on 22.09.2015 on the ground of non-prosecution. While that being so, when the petitioner came to knowledge about the dismissal of the said application, he filed an application for restoration of I.A.No.262 of 2012. However, there was a delay of 666 days and that according to the petitioner, the delay has occurred only because of his aging and the consequential ailment suffered by him.

5. The said application was stoutly contested by the respondents on the ground that in spite of the dismissal of I.A.No.262 of 2012, the petitioner has contested many other applications. Therefore, the reason assigned for restoration of I.A.No.262 of 2012 is not acceptable and contended that the same is not a sufficient cause to condone the delay.

6. The learned Government Advocate appearing for the 26th respondent has also objected this application.



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7. This Court has given anxious consideration to the submissions of the learned counsel on either side.

8. The short facts which emerge from the above discussion, is that since the petitioner has not paid batta to the proposed 25th defendant, the application was dismissed on 22.09.2015 and the only reason assigned in the affidavit is that he was aged about 80 years and could not meet his counsel because of his ailment. This reason was disbelieved by the learned trial Judge.

9. It is pertinent to mention that the application filed seeking for condonation of delay, has to be considered very liberally and the very Section itself is elastic enough to mitigate the rigour from the provisions of limitation Act. Whenever the limitation hampers providing the substantial justice, for the sufficient cause, the limitation can be condoned.

10. In this case, the 666 days was not condoned by the learned trial Judge, as the Court below disbelieved the reasons assigned by the petitioner. Considering the age of the petitioner, qua , being 80 years, and his reasons of



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age related ailment, and further considering that nature of suit and the reason for impleadment, this Court finds sufficient cause to allow this application. However, as a compensation for the respondent's hardship, this Court wants to impose the cost of Rs.2,000/- (Rupees Two Thousand only).

11. In the result, this Civil Revision Petition stands allowed on condition that the petitioner shall pay a sum of Rs.2,000/- (Rupees Two Thousand only) to the credit of Current Account No.7567821433, (IFSC IDIBI000H040), in Indian Bank High Court Branch, Madurai Bench of Madras High Court, Madurai, towards Kalaigamar Centenary Library, within a period of four weeks from the date of receipt of the copy of this order, failing which, this Revision Petition shall stand dismissed without any further reference to this Court. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

25.07.2023

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

1. The District Munsif cum Judicial Magistrate Court,
Vilathikulam.



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C.KUMARAPPAN,J.

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