



C.R.P.No.1080 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

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Devadoss

... Petitioner

Vs

1.Dayabiran
2.Ravindran
3.Sreedharan
4.Devasena
5.Vidhya
6.Navamani
7.Vasantha
8.Murthy
9.Vasugi
10.Mohana
11.Sampath
12.Ambigapathi
13.Salai Imayavasan
14.Thangamani

... Respondents

Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the fair and decreetal order dated 09.02.2022 made in I.A.No.01 of 2019 in O.S.No.273 of 2013 on the file of the Subordinate Judge, Ranipet, Vellore District.



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For Petitioner : Mr.K.Siva

For Respondents : Mr.Ma.Pa.Thangavel
for Mr.M.Lokesh for R1 to R5

ORDER

This civil revision petition arises against the order passed by the learned Subordinate Judge, Ranipet, dated 09.02.2022 in I.A.No.01/2019 in O.S.No.273/2013.

2. The revision petitioners are the plaintiffs in O.S.No.273 of 2013 on the file of Sub Court, Ranipet. They have presented the suit seeking a relief of declaration and for permanent injunction with respect to the suit schedule mentioned property. While the suit was pending, the third plaintiff had passed away on 15.09.2014. He had left behind his son and wife as his legal heirs, who were sought to be impleaded as parties to the suit. According to the plaintiffs, since they could not file the impleadment petition in time, the claim of the third plaintiff with regard to the suit property abated. To condone the delay in filing a petition to set aside the abatement, the plaintiffs preferred I.A.No.1/2019. This application was strongly refuted by the



defendants who would contend that there was no impediment to implead the legal representatives of the deceased plaintiff and as the petitioners/plaintiffs had been lathargic, the interest of justice is not in their favour. Therefore, they sought for dismissal of the said application. The learned Trial Judge after hearing both sides, came to a conclusion that this application had been filed only to prolongate the proceedings and therefore, she dismissed the petition. Aggrieved by which, the present revision has been filed by the eighth plaintiff.

3. Heard Mr.K.Siva, learned counsel for the revision petitioner and Mr.Ma.Pa.Thangavel for Mr.M.Lokesh, learned counsel for the respondents.

4. In a suit for declaration of title and for injunction, the plaintiff does not gain anything by attempting to drag on the proceedings. Where vital rights over the property are involved, the Court should normally lean in favour of the party filing the application. This is especially shown in the case where the other plaintiffs were bonafidely prosecuting the litigation. In ***Perumon Bhagvathy Devaswom Vs Bhargavi Amma and others***, (2008) 8 SCC 321, the Supreme Court has held that an application under Order XXII



Rule 9 of CPC filed together with condonation of delay application should be construed liberally. It is not in dispute that the plaintiffs have previously made an attempt to implead the parties and since that application was opposed, they withdrew the said application and came forward with a fresh set of applications to condone the delay in filing a petition to set aside the abatement and to bring on record the legal representatives of the deceased plaintiff.

5. The nature and scope of the term "sufficient cause" varies from provision to provision as it could be found under Order XXII Rule 9 of CPC, Limitation Act as well as other provisions of CPC. The rule that applies to condonation of delay while setting aside the exparte decree in a money suit at the instance of the defendant would not apply in an application filed by the plaintiff for restoration of suit. In the former, the Court may come to the conclusion that the defendant is attempting to drag on the litigation whereas in the latter, it is the prolongation case of the parties, who have knocked the doors of the Court. Therefore, each provision relies on the texture of the case and are proceeded accordingly.



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6. I find that the attempt of the plaintiffs to file an application to bring on record the legal heirs of the deceased plaintiff should have been considered by the Trial Court previously. However, I cannot be insensitive to the fact that the defendants have been litigating the matter for a while. The same can be offset by way of costs.

7. In the light of the above discussions, the order of the learned Subordinate Judge, Ranipet, dated 09.02.2022 in I.A.No.1/2019 is set aside, and the revision is allowed on condition that the plaintiffs shall pay a sum of Rs.10,000/- (Rupees Ten Thousand) as costs to the defendants on or before 10.06.2024. In case of failure on the part of the plaintiffs to pay the cost as directed by this Court, this civil revision petition will stand automatically dismissed. Upon payment of costs, the learned Subordinate Judge, Ranipet is required to take up the application to set aside the abatement and to bring on record for hearing, and on allowing the said application, permit the plaintiffs to amend the suit. Once all the parties are before the Court, the learned Trial Judge is required to give priority to the suit and dispose of the



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suit as expeditiously as possible. By this order, the parties may be able to get the judgment, on the merits of the case rather than resorting to default. No costs.

29.04.2024

Index:Yes/No

Internet : Yes /No

Speaking order / Non-speaking order
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To:

1.The Subordinate Judge
Ranipet.

2.The Section Officer
VR Section
High Court, Madras.



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V.LAKSHMINARAYANAN,J.

ds

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