



C.R.P. Nos.3894 of 2016, 212 of 2017 and 3895 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P. No.3894 of 2016, 212 of 2017 and 3895 of 2016
and
C.M.P. No.19814 of 2016

1. Gnanambal W/o. (late) Lakshmikanthan
2. Raji Alias Varadharaji S/o. (late) Lakshmikanthan
3. Vijai S/o. (late) Lakshmikanthan
4. Jayaraj S/o. (late) Lakshmikanthan
5. Padmanaban S/o. (late) Lakshmikanthan

.....1 to 5 petitioners common in all
C.R.Ps.

6. Vijayalakshmi D/o. (late) Lakshmikanthan 6th petitioner in
C.R.P. Nos.3894 and 3895 of 2016

vs.

B.R. Panduranga Chettiar (died)

1. P. Raja S/o. (late) Panduranga Chettiar
2. P. Balaji S/o. (late) Panduranga Chettiar ... Respondents 1 & 2 in C.R.P.
Nos.3894 and 3895 of 2016

3. P. Santha W/o. (late) Panduranga Chettiar
4. Durgarani W/o. Venkatachalapathy
5. Indirani W/o. Veithiyanathan
6. Jamunarani W/o. Anbarasu
7. Latharani W/o. Devendiran

... Respondents 3 to 7 in C.R.P.
Nos. 3894 and 3895 of 2016 and
Respondents 1 to 5 in C.R.P.



C.R.P. Nos.3894 of 2016, 212 of 2017 and 3895 of 2016

No.212 of 2017

Prayer in C.R.P. No.3894 of 2016: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decreetal order dated 26.07.2016 in I.A. No.597 of 2011 in I.A. No.79 of 2008 in O.S. No.1025 of 1994 on the file of learned Principal District Munsif, Tiruvannamalai.

Prayer in C.R.P. No.212 of 2017: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decreetal order dated 06.08.2016 in I.A. No.561 of 2007 in O.S. No.924 of 1996 on the file of learned Principal District Munsif, Tiruvannamalai.

Prayer in C.R.P. No.3895 of 2016: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decreetal order dated 26.07.2016 in I.A. No.79 of 2008 in O.S. No.1025 of 1994 on the file of learned Principal District Munsif, Tiruvannamalai.

For Petitioner	:	Mr. R. Rajarajan [all C.R.Ps.]
For Respondents	:	
<u>C.R.P. No.3894 of 2016</u>		R1, R2 – Served – no appearance R3 – died vide Court order dated 01.03.2024. R4 to R6 – Mr. K. Bhaskar R7 - Served – no appearance.



WEB COPY



C.R.P. Nos.3894 of 2016, 212 of 2017 and 3895 of 2016

C.R.P. No.212 of 2017

R1 – died vide Court order dated
01.03.2024.

R2 and R4 – Mr. K. Bhaskar

R3 & R5- Served – no
appearance.

C.R.P. No.3895 of 2016

R1, R2 – Served – no appearance
R3 – died vide Court order dated
01.03.2024.

R4 to R7 – Mr. K. Bhaskar

R7 - Served – no appearance.

COMMON ORDER

The Civil Revision Petitions are filed challenging the order passed by the Court below dismissing the application filed by the petitioners to condone delay of 1329 days in seeking to restore Suit in O.S. No.1025 of 1994, to condone delay of 1273 days in seeking to set aside the exparte decree in O.S. No.924 of 1996 and to set aside the order dismissing the application filed by the petitioners to bring them on record as legal representatives of deceased sole plaintiff in O.S. No.1025 of 1994.

2. The petitioner's predecessor in interest Lakshmikanthan filed a Suit for bare injunction in O.S. No.1025 of 1994 against Panduranga Chettiar and the respondents. The said Suit was dismissed for default on 09.02.2004. The



C.R.P. Nos.3894 of 2016, 212 of 2017 and 3895 of 2016

said Panduranga Chettiar filed a Suit for bare injunction against the Lakshmikanthan in O.S. No.924 of 1996 and the same was decreed exparte on 21.04.2004. The said Lakshmikanthan died on 31.07.2007. Thereafter, the petitioners herein filed the instant application to restore the Suit in O.S. No.1025 of 1994 to set aside the exparte decree in O.S. No.924 of 1996 and to bring them on record as legal representatives of deceased sole plaintiff in O.S. No.1025 of 1994. Since there was delay in restoring the Suit and seeking to set aside the exparte decree, the petitions to condone delay of 1329 days in seeking to restore Suit in O.S. No.1025 of 1994, to condone delay of 1273 days in seeking to set aside the exparte decree in O.S. No.924 of 1996 and to set aside the order dismissing the application filed by the petitioners to bring them on record as legal representatives of deceased sole plaintiff in O.S. No.1025 of 1994 were filed. The Trial Court, not satisfied with the reasons assigned by the petitioners, dismissed the condone delay petitions and consequently the petition to bring them on record as legal representatives of deceased sole plaintiff was closed. Aggrieved by the same, the petitioners are before this Court.



C.R.P. Nos.3894 of 2016, 212 of 2017 and 3895 of 2016

3. In the affidavit filed in support of the condone delay petitions, it was stated by the petitioners that the Suit was prosecuted by their father by engaging a counsel and the petitioners were not aware of the details of litigation. It was also stated that they acquired knowledge about the litigation, only after the death of their father when they received notice in I.A.561 of 2007 in O.S. No.924 of 1996 and immediately steps have been taken to file applications to set aside the exparte decree and to restore the Suit with necessary petitions along with the petition to bring the legal representatives on record.

4. It is seen from the records filed in the typed set of papers that the Suit in O.S. No.1025 of 1994 filed by the petitioners' father Lakshmikanthan was dismissed for default on 09.02.2004. Likewise, the Suit filed by the respondent Panduranga Chettiar was decreed exparte against the said Lakshmikanthan as early as on 21.02.2004. The petitioners' father Lakshmikanthan died only on 31.07.2007. Therefore, it is clear that the father of the petitioners namely Lakshmikanthan did not take any steps to restore the Suit or to set aside the exparte decree against him for the period of 3 years even during his life time.



C.R.P. Nos.3894 of 2016, 212 of 2017 and 3895 of 2016

5. In the affidavit filed in support of the condone delay petitions, absolutely there is no explanation on the part of the petitioners to explain about the delay of 3 years namely period between 09.02.2004 and 31.07.2007 (date of death of the father of the petitioners) . The petitioners are not entitled to explain the delay by saying immediately after the death of their father, steps had been taken on 03.10.2007, when there is no explanation for the delay of 3 years between the period from February 2004 to July 2007.

6. The Trial Court correctly came to the conclusion that the petitioners failed to show sufficient cause for the delay of more than 3 years. Therefore, I do not find any error in the order passed by the Trial Court is dismissing the applications to condone delay in filing petitions to restore the Suit in O.S. No.1025 of 1994 and to set aside the exparte decree in O.S. No.924 of 1996. In view of the dismissal of the condone delay petition in O.S. No.1025 of 1994, petition filed by the petitioners to bring them on record as legal representatives of the deceased sole plaintiff has become infructuous. Accordingly, the order dated 26.07.2016 in I.A. No.597 of 2011 in I.A. No.79 of 2008 in O.S. No.1025 of 1994, order dated 06.08.2016 in I.A. No.561 of



C.R.P. Nos.3894 of 2016, 212 of 2017 and 3895 of 2016

2007 in O.S. No.924 of 1996 and order dated 26.07.2016 in I.A. No.79 of

2008 in O.S. No.1025 of 1994 on the file of learned Principal District Munsif,

Tiruvannamalai are confirmed.

7. Therefore, the Civil Revision petitions are dismissed. No costs. The connected miscellaneous petition is closed.

26.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
mjs

To

The Principal District Munsif, Tiruvannamalai.



WEB COPY



C.R.P. Nos.3894 of 2016, 212 of 2017 and 3895 of 2016

S.SOUNTHAR, J.

mjs

C.R.P. Nos.3894 of 2016, 212 of 2017
and 3895 of 2016

26.03.2024