



C.R.P.No.1539 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1539 of 2020

and

C.M.P.No.9213 of 2020

Palaniammal

... Petitioner

Vs.

Muthunaickar @ Pattakara Muthunaickar (Died)

Chinnamuthunaicker(Died)

1.Balasubramani

2.Palanisamy

3.Santhi

4.Minor.Silambarasan

5.Minor.Sasi

6.Chellammal

7.Rangasamy

8.Palanisamy

9.Rangammal

10.Kokila

11. Muthusamy

...Respondents



C.R.P.No.1539 of 2014

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order of the District Munsif Court at Paramathi, dated 11.11.2019 in I.A.No.1 of 2019 in O.S.No.144 of 2014

For Petitioner	: Mr.P.Valliappan Senior Counsel for Mr.T.Deeraj
For Respondent 1 to 3, 8 to 10	: served-No appearance
For respondent 6,7 & 11	: Not ready in notice
For respondent 4 &5	: Minor represented by R3

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner to bring on record the legal representatives of deceased defendants 1 and 2.

2. It is the case of the petitioner that 1st defendant in the suit died on 12.07.2018 and the 2nd defendant died on 18.12.2015 and the said fact came to her knowledge only on filing of memo by the 3rd defendant on 17.12.2018. The petition was dismissed by the trial Court mainly on the ground that petitioner failed to file an application to set aside the abatement caused to the suit due to death of defendants 1 and 2. It is also stated that petitioner failed to file an



application to condone the delay in filing such set aside the abatement petition. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that the fact of death of defendants 1 and 2 came to her knowledge only on 17.12.2018 when a memo was filed to that effect. Immediately steps have been taken and instant application to bring on record the legal representatives of deceased defendants 1 and 2 was filed on 12.02.2019 before expiry of ninety days. Therefore, there was no delay in filing petition to bring on record the legal representatives of deceased defendants 1 and 2

4. The limitation for filing petition to bring on record the legal representatives starts from the date of death not from the date of knowledge. Therefore, it is incumbent on the petitioner to file an application to set aside the abatement and also to condone the delay.

5. If the petitioner failed to file a petition to set aside the abatement and to condone the delay, the Court below ought not to have numbered the LR



petition and it ought to have returned the same pointing out the defects. In stead of returning the LR petition, the Trial Court numbered the same and dismissed it on the ground that petitioner failed to file application to set aside the abatement and to condone the delay.

6. In view of the facts and circumstances of the case, this Court feels that an opportunity shall be given to the petitioner to file appropriate applications to set aside the abatement and to condone the delay. Accordingly, the impugned order is set aside and the matter is remitted back to the file of the Trial Court for fresh consideration.

7. It is made clear that petitioner shall file an application to set aside the abatement and also to condone the delay within a period of three weeks from the date of receipt of a copy of this order. If such application is filed by the petitioner, the same shall be considered along with I.A.No.1 of 2019 and order shall be passed on merits.



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8. With these observations, the Civil Revision Petition stands allowed.

No costs. Consequently, connected miscellaneous petition is closed.

11.03.2024

Index : Yes / No

Internet : Yes / No

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To

The learned District Munsif Judge, Paramathi,



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S.SOUNTHAR, J.

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