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C.R.P.No.1358 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.1358 of 2021

1.Abdul Baree
2.Halil Basha

... Petitioners

Vs.

1.Indira
2.Malliga
3.Raja
4.Lakshmi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order passed by the Hon'ble District Munsif Judge at Panruti on 23.08.2018 in I.A.No.115 of 2011 in O.S.115 of 2002.

For Petitioner : M/s.D.E.Anisree Sangavi
for M/s.Usha Ramman

For Respondent 1 &4 : Set exparte in Lower Court
For respondents 2 &3 : No appearance



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ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioners to bring on record the legal representatives of the deceased sole defendant in the suit.

2. The petitioners herein filed a suit for recovery of possession against one Andal Ammal. She died on 15.08.2002. Thereafter, the petitioners herein filed an application in I.A.No.115 of 2011 to bring on record the legal representatives of the deceased Andal Ammal on 03.01.2010. The said application was dismissed by the Trial Court mainly on the ground that petitioners failed to file an application to set aside the abatement caused to the suit due to death of sole defendant and also a petition to condone the delay in filing petition to set aside the abatement caused to the suit.

3. If the petitioners failed to file petitions to set aside the abatement and to condone the delay in filing petition to set aside the abatement, the Court below ought not to have numbered the LR petition and ought to have returned



the same with direction to file applications to set aside the abatement and to condone the delay. Instead of doing so, the Court below dismissed the LR petition on the ground that petitioners failed to file application to set aside the abatement and condone the delay. Therefore, this Court feels that opportunity shall be given to the petitioner to file application explaining the reasons for delay in filing LR petition.

4. Though respondents 2 and 3 are served and the names are appeared in the cause list, there is no representation for them. The respondents 1 and 4 remained *exparte* before the Trial Court. Therefore, issue of notice to respondents 1 and 4 is not necessary. Accordingly, this Court is inclined to dispose of the civil revision petition as follows:-

This Civil Revision Petition is allowed by setting aside the order impugned in this Revision. The matter is remitted back to the file of Trial Court with direction that petitioners shall file a petition to set aside the abatement and petition to condone the delay in filing petition to set aside the abatement within a period of four weeks from the date of receipt of a copy of



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this order. In case, the petitioners failed to file those applications within the time stipulated, the civil revision petition shall automatically stand dismissed.

If the petitioners file applications within the time stipulated, the Court below is directed to consider the same and dispose of the applications along with I.A.No.115 of 2011 on merits and in accordance with the law. No costs.

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Index : Yes / No
Internet : Yes / No
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To

The learned District Munsif Judge, Panruti



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S.SOUNTHAR, J.

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