



C.R.P. (MD).Nos.1294 of 2012 and 788 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)Nos.1294 of 2012 and 788 of 2014
and
M.P(MD) Nos.1 of 2012 and 2 of 2014

C.R.P(MD) No.1294 of 2012:

R.Moorthiammal

... Petitioner/2nd Respondent/
2nd Respondent

-VS-

1.Guruvammal (Died)

... 1st Respondent/Petitioner
Petitioner/Plaintiff

K.T.M.Ramasamy (died)

2. R.Lakshmipathi Raj (died)

3. Lakshmithilagam

4. Menaka

5. Jothi Sumati

6. Rajalakshmi

Logagurunathan (died)

7. Umamaheswari



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8. Rajkumar

9. Sailaja

... Respondents 2 to 9/
Respondents 3 to 7 and 9 to 11/
Respondents 3 to 7 and 9 to 11

10. C.K.Narayanasamy

11. C.K.Lakshmanan

12. J.Backiyam

... Respondents 10 to 12

(Respondents 10 to 12 are brought on record as Legal Heirs of the deceased 1st Respondent vide order of this Court dated 09.06.2023 in C.M.P(MD) No. 1318 of 2016 in C.R.P(MD) No.1294 of 2012)

13. L.Krishnapriya

14. Suryaprakash

... Respondents 13 and 14

(Respondents 13 and 14 are brought on record as Legal Heirs of the deceased 2nd respondent vide order of this Court dated 22.06.2023 made in C.M.P(MD) Nos. 230 and 231 of 2017 in C.R.P(MD) No.1294 of 2012)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to strike off the proceedings in E.A.No.51 of 2006 on the file of the District Munsif Court, Theni in E.P.No.297 of 1990 on the file of the District Munsif Court, Theni in O.S.No.495 of 1982 on the file of the District Munsif



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Court Periyakulam.

For Petitioner : Mr.R.Saravanan

For Respondents : Mr.B.Kumaresan
for R3 to R7 and R9

: Mr.Janakiramulu – for R11

: Mr.S.Anandha Rajagopal
for -R12

: No appearance – for R10, R13 & R14

C.R.P(MD) No.788 of 2014:

1. R.Moorthiammal

2. R.Lakshmipathi Raj (died)

3. Lakshmithilagam

4. Menaka

5. Jothi Sumathi

6. Rajalakshmi

7. Umamaheswari

8. Rajkumar

9. Sailaja

... Petitioners/Petitioners/Respondents
/ Respondents/Defendants

-VS-

1.Guruvammal (Died)

... Respondent/Respondent/Petitioner
Petitioner/Plaintiff



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2. C.K.Narayanasamy

3. C.K.Lakshmanan

4. J.Backiyam ... Respondents 2 to 4

(Respondents 2 to 4 are brought on record as Legal Heirs of the deceased sole Respondent vide order of this Court dated 09.12.2016 made in C.M.P(MD) No.1312 of 2016 in C.R.P(MD) No.788 of 2014)

5. L.Krishnapriya

6. Suryaprakash ... Respondents 5 and 6

(Respondents 5 and 6 are brought on record as Legal Heirs of the deceased 2nd petitioner vide order of this Court dated 22.06.2023 made in C.M.P(MD) Nos.176 and 177 of 2017 in C.R.P(MD) No.788 of 2014)

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order dated 05.06.2012 passed in E.A.No.19 of 2012 on the file of the District Munsif Court, Theni in E.A.No.51 of 2006 on the file of the District Munsif Court, Theni in E.P.No.297 of 1990 on the file of the District Munsif Court, Theni in O.S.No.495 of 1982 on the file of the District Munsif Court, Periyakulam.

For Petitioners : Mr.R.Saravanan



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For Respondents : Mr.Janakiramulu – for R3
: Mr.S.Anandha Rajagopal
for -R4

COMMON ORDER

C.R.P(MD) No.1294 of 2012 has been filed by the petitioner challenging the order of delivery passed in E.P.No.297 of 1990 on the file of the District Munsif Court, Theni.

2. C.R.P(MD) No.788 of 2014 has been filed by the petitioners challenging the order of rejection of an application to condone the delay of 172 days in setting aside the *exparte* order in E.P.No.297 of 1990.

3. The legal heirs of the judgment debtor in O.S.No.495 of 1982 on the file of the District Munsif Court, Periyakulam are the revision petitioners herein.

4. The first respondent herein, namely, Guruvammal had filed the above said suit for the relief of recovery of money and the suit was decreed on 28.03.1984. E.P.No.297 of 1990 was filed to bring the property of the defendant/ judgment debtor for sale. Pending proceedings, the decree holder



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had passed away and her legal heirs were impleaded. The judgment debtor has also passed away and his legal heirs were impleaded. Though the legal heirs of the deceased judgment debtor were served, they have chosen to remain *exparte* and they were set *exparte* on 10.08.2011. Thereafter, the order of delivery was passed in E.A.No.51 of 2006. Thereafter, when the Ameena visited the property, there was obstruction from the judgment debtor and therefore, the police protection was also ordered. The present application in E.A.No.19 of 2012 has been filed by the judgment debtor to condone the delay of 172 days in filing the application to set aside the *exparte* order in the execution proceedings. This application came to be dismissed by the Executing Court on the ground that the legal heirs of the judgment debtor have not given any proper reason for condoning the delay of 172 days. Challenging the same, the present revision petitions have been filed.

5. According to the learned counsel appearing for the revision petitioners, the petitioners are illiterate and excess properties have been filed than what is required for satisfaction of the decree. They were not properly advised by their counsel and therefore, they could not appear on 10.08.2011.



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6. The learned counsel appearing for the respondent/decreed holder had submitted that the suit is of the year 1982 and the execution proceedings have been initiated in the year 1990. Though the sale was confirmed in the year 2004, still they were not able to get delivery of the property, in view of the delaying tactics adopted by the judgment debtor and his legal heirs. No proper reasons have been assigned by the judgment debtor for condoning the delay of 172 days. Hence, he prayed for sustaining the order passed by the Execution Court.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The facts narrated above clearly indicate that the suit for recovery of money has been filed in the year 1982 and the suit was decreed in the year 1984. The execution proceedings have been initiated in the year 1990. The Court auction sale has taken place in the year 2004 and the sale has been confirmed in the same year. Thereafter, delivery has been ordered in the year 2006. Still the decree holder is not able to realize the decree. That apart, no proper reasons have been assigned for condoning the delay of 172 days in



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filing the application to set aside the *exparte* order. It could be seen from the records that the defendant has made an attempt to file an independent suit, challenging the Court auction sale, which has been dismissed. Therefore, it is clear that the petitioners were very well aware of the legal rights.

9. In these circumstances, this Court is of the view that there are no merits in these Civil Revision Petitions. Accordingly, these Civil Revision Petitions stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

05.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The District Munsif Court,
Theni.

2. The District Munsif Court,
Periyakulam.



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R.VIJAYAKUMAR,J.

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