



C.R.P.(MD).Nos.2498 of 2012 and 3119 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.02.2024

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THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD).Nos.2498 of 2012 and 3119 of 2023

and

M.P.(MD).No.1 of 2012

C.R.P.(MD).No.2498 of 2012

1.S.M.Govinda Thevar (Died) .. Petitioner/Petitioner/Plaintiff

2.Rajammal

3.Muthuvelsamy

4.Murugeswari

5.G.Ravisankar .. Petitioners 2 to 5

(Petitioners 2 to 5 are brought on record as LR's of the deceased sole petitioner vide Court order dated 22.04.2022 made in C.M.P.(MD).No.8491 of 2021 in C.R.P.(MD).No.2498 of 2012)

Vs.

1.P.Lakshmi

2.Shanmuga Sundaram .. Respondents/Respondents/Defendants



C.R.P.(MD).Nos.2498 of 2012 and 3119 of 2023

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 07.08.2012 made in I.A.No.91 of 2012 in O.S.No.240 of 2010 on the file of the Additional District Munsif & I/c Principal District Munsif, Sankarankoil.

For Petitioners : Mr.B.Janarth Kumar

For Respondents : Mr.R.J.Karthick

C.R.P.(MD).No.3119 of 2023

1.S.M.Govinda Thevar (Died) .. Petitioner/Petitioner/Plaintiff

2.Rajammal

3.Muthuvelsamy

4.Murugeswari

5.G.Ravisankar .. Petitioners 2 to 5

(Petitioners 2 to 5 are brought on record as LR's of the deceased sole petitioner vide Court order dated 12.08.2022 made in C.M.P.(MD).No.8489 of 2021 in C.R.P.(MD).SR.No.47506 of 2020)

Vs.

1.P.Lakshmi

2.Shanmuga Sundaram .. Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 05.07.2019



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passed in I.A.No.344 of 2016 on the file of the Additional District Munsif Court, Sankarankovil.

For Petitioners : Mr.B.Janarth Kumar

For Respondents : Mr.R.J.Karthick

COMMON ORDER

The Civil Revision Petition in C.R.P.(MD).No.2498 of 2012 is arising out of an application filed under Order 23 Rule 1 of CPC and the other Civil Revision Petition in C.R.P.(MD).No.3119 of 2023 is arising out of an application filed under Section 5 of the Limitation Act.

2. The learned counsel for the petitioners would submit that there was a common wall at the time of filing of the suit and during the interregnum period, since the common wall has been fully demolished, a necessity has arisen for them to file an application to withdraw the suit with liberty to file a fresh suit.

3. On perusal of the records, this Court found that such application has been filed when the matter was posted in the list twice. Therefore, the Trial Court has ultimately found that there is no merit in the application for



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withdrawal of the suit and dismissed the same. This Court also could not find any grounds to deviate from the findings recorded by the Trial Court. Therefore, this Court is inclined to dismiss the Civil Revision Petition in C.R.P.(MD).No.2498 of 2012.

4. The other Civil Revision Petition in C.R.P.(MD).No.3119 of 2023 has been filed against the dismissal order passed in the application to condone the delay of 1180 days. It is pertinent to mention here that when the petitioners have failed to accomplish their attempt for withdrawal of the suit, it seems that they allowed the suit to be dismissed for default and in the meanwhile, when they filed an application for restoration, there was a delay of 1180 days.

5. The learned counsel for the petitioners would submit that in view of the pendency of some criminal cases, the petitioners were not in a position to follow up this case.



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6. The Trial Court has disbelieved their contention and has ultimately dismissed the application filed under Section 5 of the Limitation Act. The delay of 1180 days, that too in a suit where they failed in their attempt to have an order of withdrawal of the suit, would only indicate the lethargic attitude of the petitioners. Therefore, this Court is of the firm view that the dismissal of the application filed under Section 5 of the Limitation Act by the Trial Court does not warrant any interference.

7. In the result, both the Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

02.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm



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To

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1. The Additional District Munsif Court,
Sankarankovil.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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