



C.M.A.(MD)No.76 of 2023 and C.R.P.(MD)No.582 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.M.A.(MD)No.76 of 2023 and
C.R.P.(MD)No.582 of 2023

C.M.A.(MD)No.76 of 2023:

P.Meena (Died)

1.P.Ramasubramaniaraja
2.C.Devasena

... Petitioners

Vs.

Paramanantham (Died)

1.S.P.Murugesan
2.S.Kannan
3.S.Maheswari

N.Subramanian (Died)

4.N.S.Athinarayanan
5.S.P.Alagesan
6.S.P.Vengudu Mayandi
7.K.Rajendran
8.R.Santhanam
9.P.Meera

... Respondents



C.M.A.(MD)No.76 of 2023 and C.R.P.(MD)No.582 of 2023

PRAYER : Civil Miscellaneous Appeal is filed under Order 43 Rule 1(C) of C.P.C., against the fair and executable order, dated 25.03.2022, passed in I.A.No. 328 of 2020 in O.S.No.557 of 2004 on the file of the VI Additional District Judge, Madurai.

C.R.P.(MD)No.582 of 2023:

P.Meena (Died)

1.P.Ramasubramaniaraja
2.C.Devasena

... Petitioners

Vs.

Paramanantham (Died)

1.S.P.Murugesan
2.S.Kannan
3.S.Maheswari

N.Subramanian (Died)

4.N.S.Athinarayanan
5.S.P.Alagesan
6.S.P.Vengudu Mayandi
7.K.Rajendran
8.R.Santhanam
9.P.Meera

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and executable order, dated 25.03.2022, passed in I.A.No.327 of 2020 in O.S.No.557 of 2004 on the file of the VI Additional District Judge, Madurai.



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In both cases:

For Petitioners : Mr.P.Shanmugam
R1 to R8 : Given Up
For R9 : Mr.J.Barathan

COMMON ORDER

The present civil revision petition is filed against the order, dated 25.03.2022, passed in I.A.No.327 of 2020 in O.S.No.557 of 2004 on the file of the VI Additional District Judge, Madurai.

2. The O.S.No.557 of 2004 was filed by one Paramanandham and three others for partition, mesne profits and permanent injunction not to alienate the suit schedule properties. The said Paramanandham was the first plaintiff. The plaintiffs and the defendants 4 to 6 are siblings. The suit was dismissed for default on 05.06.2007. The said Paramanandham died on 16.10.2014 and his legal heirs namely P.Meena, P.Ramasubramaniraja and C.Devasena had filed an application under Order 1 Rule 10(2) and section 151 of CPC in I.A.No.327 of 2020 praying to implead themselves as plaintiffs 5 to 7 and contest the partition suit. Also filed I.A.No.328 of 2020 under Order 9 Rule 9 of CPC to restore the main suit which



was dismissed for default on 05.06.2007. Both the applications were dismissed. Aggrieved over the dismissal of I.A.No.327 of 2020 the legal heirs had preferred Civil Revision Petition in C.R.P.(MD)No.582 of 2023. Against the dismissal of I.A.No.328 of 2020 the legal heirs had preferred Civil Miscellaneous Appeal in C.M.A.(MD)No.76 of 2023. Hence both the civil revision petition and civil miscellaneous appeal are taken together and a common order is passed.

3. The suit is filed for partition by showing two schedule of properties. In schedule of properties shown as “1(A)” there are five items of agricultural lands and in “1(B)” a house is shown. In schedule II gold, silver, copper, brass and other articles are shown as properties. As far as the property shown in “1(B)”, the same is sold by the 1st defendant father in favour of Rajendran and Sandhanam, i.e., respondents 7 and 8 herein. Subsequently, one Meera, shown as 9th respondent herein had purchased the property. The subsequent purchasers resisted the present civil revision petition and appeal stating the suit was dismissed for default, the impleading petition and restoration petition were filed without filing any condone delay petition. The delay is more than 13 years. Further, in the suit they had not impleaded the subsequent purchases.



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4. It is seen that the suit is filed for partition and the same was dismissed for default. Thereafter the 1st plaintiff died and their legal heirs had filed the above petitions. Since it is suit for partition, the dismissal of suit cannot curtail the rights for partition and limitation may not be a ground. Further it is seen that the subsequent purchasers had purchased only “1(B)” schedule of property and the 1st defendant father had sold to subsequent purchaser 7th and 8th respondents herein, who in turn had sold the property to the 9th respondent herein. But still the agricultural lands shown in “1(A)” of the schedule of properties and “II” of schedule of properties are available for partition.

5. Therefore, this Court is inclined to allow the civil revision petition and the civil miscellaneous appeal. The legal heirs / petitioners herein are directed to file petition to condone the delay, thereafter the Trial Court is directed to take I.A.Nos.327 and 328 of 2020 and also the condone delay application and hear the same, after giving opportunity to all parties and pass orders. Further, all the necessary parties shall be impleaded including the subsequent purchasers and thereafter, the suit may be heard on merits.



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6. With the above said observations, the civil revision petition and the civil miscellaneous appeal are allowed. No costs.

19.09.2024

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

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To

1. VI Additional District Judge, Madurai.
2. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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