



C.R.P.(MD)No.32 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.32 of 2024

and

CMP (MD) No.243 of 2024

1.V.C.Rajarathinam (Died) : 1st Petitioner/
2.Anbumozhi Respondent/
3.Santhosh Manikandan Plaintiff
4.Narasimman
(Petitioners 2 to 4 are brought
on record as LRS of the deceased
sole petitioner, vide court order,
dated 26/09/2022 made in CMP(MD)
No.8815 of 2022 in CRP(MD)SR
No.14602 of 2020) : Petitioners 2 to 4

Vs.

1.V.C.Manikam (Died)
2.M.Jeyanthi : Respondents 1 and 2/
3.M.Subash Petitioners/
4.M.Revathy Defendants
5.M.Bhuvanesh : Respondents 2 to 5
(Respondents 2 to 5 are
brought on record as Lrs
of the deceased 1st respondent
vide court order, dated 20/12/2023
made in CMP(MD)No.3416 of 2021 in
CRP(MD)SR No.14602 of 2020)

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records relating to the Order and Decreetal Order, dated 22/08/2019 in IA No.58 of 2019 in OS No.177 of 2012 on the file of the Additional Subordinate Court, Thanjavur and set aside the same.



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For Petitioners : Mr.A.Siva Subramanian
For Respondents : Mr.D.Balamurugan

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 22/08/2019 passed in IA No.58 of 2019 in OS No.177 of 2012 by the Additional Subordinate Court, Thanjavur.

2.The facts in brief:-

A suit in OS No.177 of 2012 was filed by the deceased plaintiff namely V.C.Rajarathinam seeking partition and separate possession of his share. The defendants appeared, filed written statement stating that already there was partition between their family through document, dated 20/07/1997, issued framed and trial commenced. At that time, the defendants took out a petition in IA No.58 of 2019 under Order 8 Rule 3(A) of CPC seeking condonation of delay in producing the documents stating that the documents now produced were mortgaged at the time of filing the written statement with a third party. Now they cleared the mortgage and received back the documents. Because of that, there is a delay.



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4.That was resisted by the petitioner stating that the document, dated 20/07/1997 is an unregistered and unstamped partition deed. So, it cannot be received in evidence for any purpose. But however, the trial court thought it fit to allow the application.

5.Against which, this civil revision petition is preferred.

6.Heard both sides,

7.At the outset, as mentioned above, the petition is filed one seeking to condone the delay in producing the documents under Order 8 Rule 1(A) CPC.

8.Order 8 Rule 1-A CPC reads as under:-

"O.8, R.1-A.Duty of Defendant to produce documents upon which relief is claimed or relied up him.-(1)Where the defendant bases is defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the



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document and a copy thereof, to be filed with the written statement.

(2)Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3)A document which ought to be produced in Court by the defendant unless this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4)Nothing in this rule shall apply to documents-

(a)produced for the cross-examination of the plaintiff's witnesses, or

(b)handed over to a witness merely to refresh his memory."

9.The only point to be considered is whether the delay has been properly explained or not.

10.Now the delay is properly explained, since it has been stated that the alleged document has been mortgaged at the time of filing the written statement and now they



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discharged the same. Actually, the delay occurred because of that issue only. So, no objection valid in this nature can be raised by the petitioners with the condonation of delay.

11.Now the problem occurs as to the reception of the mortgage of the document, dated 20/07/10997. Other documents are only receipts, which requires no registration and stamp duty. Except this document, the other documents can be received in evidence. But this relates against the admissibility of the document, dated 20/07/1997. Condonation of delay in receiving the document is one thing. Deciding the question of admissibility is another thing. Both should not be clubbed together.

12.Regarding the admissibility of the document, dated 20/07/1997, the petitioners can very well raise their objection at the relevant point of time. The trial Court is duty bound to consider the objection with regard to the admissibility of the document in the light of the judgment of the Hon'ble Supreme Court in **Yellapu Uma Maheswari and another Vs. Buddha Jagadheeswara Rao and other [2015(16) SCC 727]** as relied on and followed by the Coordinate Bench of this court in **Saritha Vs.**



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M.A. Shanmugham [2022 (3) CTC 862]]. On this point only, this civil revision petition is preferred. As stated above, the stage has not reached. Now it has to be considered at the time of receiving the document in evidence.

13. With the above said direction and liberty, this civil revision petition is **disposed of**. No costs. Consequently, connected Miscellaneous Petition is closed.

29/02/2024

Index: Yes/No
Internet: Yes/No
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To,

1. The Additional Sub Court,
Thanjavur.
2. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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