



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 20.09.2024

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THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Rev.Applc(MD)No.45 of 2024

and

CRP(MD)No.1867 of 2024

1.Rev.A(MD)No.45 of 2024:-

S.Babu : Petitioner/Petitioner

Vs.

1.V.Pandiarajan

V.Durairaj (Died)

2.D.Mohanram

3.D.Tiruvenkada Kannan

4.D.Jayalakshmi

D.Gunasundari (Died)

5.Pandi @ Karmegam

6.Rahini

7.Sonaiyandi : Respondents/Respondents

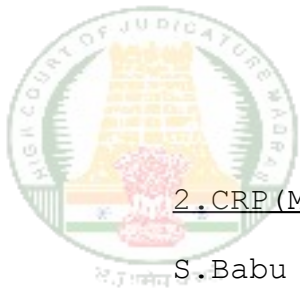
(R2 to R4 are given up)

Prayer: This Review Application is filed under Order 47 Rule 1 and 2 CPC r/w section 114 of the Civil Procedure Code to review the order rendered in CRP(MD)No.1473 of 2022, dated 23/02/2024.

For Petitioner : Mr.R.Suriyanarayanan

For 1st Respondent : Mr.R.Sankar Ganesh

For R2 to R7 : Given up



2.CRP(MD)No.1867 of 2024:-

S.Babu

: Petitioner/3rd Party/3rd Party

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1.V.Pandiarajan

Vs.

: 1st Respondent/Petitioner/
Plaintiff

V.Durairaj (Died)

2.D.Mohanraman

3.D.Tiruvenkada Kannan

4.D.Jayalakshmi

D.Gunasundari (Died)

5.Pandi @ Karmegam

6.Rahini

7.Sonaiyandi

(R2 to R4 are given up)

: Respondents 2 to 6/

Respondents/

Defendants 2 to 4, 6 and 7

Prayer: This Civil Revision is filed under section 115 of the Civil Procedure Code, to set aside the Docket Order, dated 04/03/2024 made in EP No.192 of 2008 in OS No.21 of 2008 on the file of the Sub Court, Theni

For Petitioners : Mr.R.Suriyanarayanan

For 1st Respondent : Mr.R.Sankar Ganesh

For R2 to R7 : Given up

COMMON ORDER

The review application is filed seeking to review the order rendered in CRP(MD)No.1473 of 2022, dated 23/02/2024, whereas civil revision petition has been filed seeking to set aside the docket order, dated 04/03/2024 made in EP No.192 of 2008 in OS No.21 of 2008 on the file of the Sub Court, Theni.



2.The facts in brief:-

CRP (MD) Nos.1473 of 2022 and 2494 of 2023 were filed against the order passed by the trial court. It was heard in common and a common order was passed on 23/02/2024 by making the following observation:-

"7.The learned counsel appearing for the 1st respondent would submit that even though, the decree was passed as early as 25/06/2008 even after a lapse of 16 years, he could not realize the fruits of the decree; One after another, proceedings are initiated either by the Judgment Debtor or by the private persons. He also filed elaborate written statement setting out the facts and circumstances.

8.Another son by name D.Mohanram, the 2nd respondent herein, who is the son of the deceased 1st respondent V.Durairaj, filed the suit in OS No.68 of 2008 seeking partition of the property. That suit was also dismissed.

9.So from the narration of the above said facts, it is seen that Decree Holder is not able to realize the fruits of the decree. Under these circumstances, these two civil revision petitions came to be filed.



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10. We will straightaway dismiss the CRP(MD)No.1473 of 2022 stating that since there is no stay order by the appellate court namely the CMA court, the executing court cannot on its own stay the execution of the decree. So the order passed by the trial court namely executing court does not suffer from any illegality or irregularity. So that, this civil revision petition is liable to be dismissed straightaway. Accordingly, CRP(MD)No.1473 of 2022 is **dismissed**.

11. So far as CRP(MD)No.2494 of 2023 is concerned, of course that there is a huge delay on the part of the parties in filing CMA. He is a third party to the proceedings. According to him, he purchased the property when ex-parte decree was passed. But however, there is a finding against him to the effect that a collusive settlement deed was executed by the original defendant V.Pandiarajan in favour of Thiruvengadam to avoid the execution of the decree against the property.

12. Similarly, the Decree Holder also filed IA No.6 of 2008 to declare that the settlement deed, dated 04/02/2008 is null and void.



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13.What happened to that suit is not clear on record. So the right of this petitioner must be decided only in the appeal proceedings. Now there is a delay of 914 days in filing the CMA.

14.According to the learned counsel appearing for the petitioner, the delay occurred, since he could not able to contact his advocate office, because he died, on 20/08/2020. Why there was a delay on his part in approaching his advocate office is also not explainable. Now the entire decree amount is also deposited by the petitioner before the executing court. On that account, now the matter be allowed by condoning the delay.

15.Per contra, as mentioned above, the learned counsel appearing for the 1st respondent would submit that the reason mentioned by the petitioner is not acceptable and reliable also. He would rely upon the following judgment:-

(1)Zulaiha Syed Mohideen Vs.
D.Visalakshmi Ammal (2013(3)MWN (Civil)
509);

(2)K.M.Balasubramaniam Vs.
C.Loganathan (2011(2) MWN (Civil) 741;
and

(3)Jayaraman.G Vs. Devarajan
([2007(2)CTC 643]



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and would submit that when sufficient cause is not shown by the petitioner, then no leniency or consideration must be made in his favour.

16.No doubt that there is a delay on the part of the petitioner, but the reason stated by him is that since the learned counsel, who was appearing for him died, so he could not contact his office immediately; That reasons assigned by the petitioner cannot be held to be wanton. When the Advocate appearing for the parties dies, intimation has to be sent to the clients by his office. Naturally, the affected person will be the parties.

17.On that sole ground, I am of the considered view that an opportunity must be given to the petitioner to prosecute the CMA to its logical conclusion. The inconvenience caused to the 1st respondent can be compensated by way of costs. But if the petition is dismissed on the ground of delay, then serious prejudice will be caused to the petitioner, especially when he has deposited the entire decree amount and also to the effect that he is a third party to the litigation between the Decree Holder and the Judgment Debtor. So CRP(MD)No.2494 of 2023 can be allowed on payment of costs."



3. After making the above said observation, CRP(MD)No.2494 of 2023 was allowed on payment of costs of Rs.10,000/-, but dismissed CRP(MD)No.1473 of 2022 stating that the order passed by the trial court does not suffer from illegality or irregularity.

4. Since there is no such order by the appellate court, now this review application is filed by the petitioner stating that by misconstruction and misconstruing the subject matter of CRP(MD)No.1473 of 2022, this court passed the above said order. Actually CRP(MD)No.1473 of 2022 was filed against the order passed by the trial court in unnumbered EA No.-/2022 in EA No.92 of 2010. According to the petitioner, actually that unnumbered EA was filed by this petitioner challenging the auction sale conducted by the Execution Court. That application was filed under Order 21 Rule 90 CPC. By docket order, the trial court rejected the petition stating that the petitioner has no *locus standi* to file the petition. Only challenging the above said rejection order CRP(MD)No.2494 of 2023 was filed. By mistake, this court has observed that an unnumbered petition is filed to stay the further proceedings in the EP.

5. Entire records have been called for and perused.



6.From the perusal of the records, it is seen that a mistake has been committed by this court by misconstruing the subject matter of CRP(MD)No.1473 of 2022. Since the mistake is apparent on the face of the records, that too committed by this court, it is the duty of this court to rectify the above said mistake. On that account, the order passed in CRP(MD)No.1473 of 2022 is reviewed and the following order is passed.

7.Simultaneously, CRP(MD)No.1867 of 2024 is filed to set aside the docket order, dated 04/03/2024 passed in EP No.193 of 2008 stating that on the basis of the dismissal order passed by this court in CRP(MD)No.1473 of 2022, the Execution Court closed the EP Proceedings. Against that docket order, CRP(MD)No.1867 of 2024 is filed.

8.By the Administrative Order, CRP(MD)No.1867 of 2024 is ordered to be tagged along with this Review Application (MD)No.43 of 2024. All the matters were heard together.

9.As mentioned above, in view of the above said mistake apparent on the face of the records, CRP(MD)No.1473 of 2022 stands **allowed** directing the Execution Court to entertain the petition filed and decide the same on its own



merits within a period of three months from the date of receipt of a copy of this order. Similarly, CRP(MD)No.1867 of 2024 is also **allowed** directing the trial court to reopen the proceedings and decide the same on its own merits within a period of three months from the date of receipt of a copy of this order. No costs.

10. With the above said directions, the review application and the civil revision petition are **allowed. No costs.**

20/09/2024

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

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



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G. ILANGO VAN, J

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and
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