



C.R.P.(MD)No.1013 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P.(MD)No.1013 of 2021

C.Kailasa Naicker (Died)

1.K.Sekar

... Petitioners / Petitioners / Petitioners /
Petitioners /Plaintiffs

Vs.

1.B.Thangaraj

2.K.Kalimuthu

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

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., to set aside Fair order and Decreetal order dated 04.01.2021 passed in I.A.No.51 of 2020 in Un-numbered I.A.No. of 2017 in I.A.No.96 of 2015 in I.A.No.117 of 2014 in O.S.No.84 of 2007 on the file of the District Munsif Court, Periyakulam by allowing this Civil Revision Petition.

For Petitioner : Mr.K.Sekar

For Respondents : No appearance



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ORDER

This Civil Revision Petition came to be filed challenging the order dated 04.01.2021 passed in I.A.No.51 of 2020 in Un-numbered I.A.No. Nil of 2017 in I.A.No.96 of 2015 in I.A.No.117 of 2014 in O.S.No.84 of 2007 on the file of the District Munsif Court, Periyakulam.

2. For the sake of convenience, the parties are referred herein as per their rank in the Original Suit.

3. The facts which led to the filing of this Civil Revision Petition is as follows:

The 2nd plaintiff is the petitioner herein. The original suit in O.S.No.84 of 2007 is one for declaration and permanent injunction. On 22.10.2012, the 1st plaintiff Thiru.C.Kailasa Naicker had passed away. Following which, an interim application in I.A.No.117 of 2014 came to be filed by the 2nd plaintiff seeking to bring on record the legal heirs of the deceased 1st plaintiff and the same was allowed with the cost of Rs.300/- (Rupees Three Hundred only).



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However, due to the default of payment of cost, the said I.A.No.117 of 2014 came to be dismissed on 12.01.2015. Hence, again an interim application in I.A.No.96 of 2015 was filed by the surviving plaintiff to restore I.A.No.117 of 2014 and the same came to be dismissed on 21.06.2016 because of non-appearance of the plaintiff's counsel, in view of the death of one Thiru.Vajravel, the counsel appearing for the plaintiff. Thereafter, the plaintiff approached the junior of the deceased counsel one Mr.M.Nagarajan and he filed a petition to restore I.A.No.96 of 2015 along with a petition for condoning the delay of 51 days which was dismissed for default by an order dated 21.06.2016. However, the same came to be returned on 29.01.2019 for certain defects and the same was not represented by the said counsel since he misplaced the bundle. Thereafter, the plaintiff approached a new counsel and the same was represented after a delay of 240 days by filing I.A.No.51 of 2020 and the same came to be dismissed on 04.01.2021. Challenging the same, the present civil revision petition came to be filed.

4. The learned counsel appearing for the petitioner submitted that, the matter has already been compromised between the parties and if this civil



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revision petition is allowed, that would facilitate the petitioner to file a compromise petition before the learned Trial Court and bring finality to the case rather than going for a fresh suit resulting in multiplicity of litigation and pressed for allowing the civil revision petition.

5. Notice has been served upon the respondents and their names were also printed in the cause list, despite the same, no representation on behalf of the respondents.

6. Heard the learned counsel appearing for the petitioner. Carefully perused the materials available on record.

7. Considering the submission of the learned counsel appearing for the revision petitioner and also the fact that the delay was due to the death of the earlier counsel one Thiru. Vajravel, this Court hereby set aside the order dated 04.01.2021 on payment of cost of Rs.5,000/- (Rupees Five Thousand only) to the Siddha Clinic, Madurai Bench of Madras High Court. (A/c No.6865578213, Indian Bank, Madurai Bench of Madras High Court), on or before 02.08.2024,



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failing which, this Civil Revision Petition shall stand automatically dismissed without further reference to this Court.

8. Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs.

29.07.2024

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

Note: Issue order copy on 31.07.2024.

To

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



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L.VICTORIA GOWRI, J.

Sml

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