



C.R.P.(MD)Nos.1901 & 1902 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)Nos.1901 & 1902 of 2023
and C.M.P.(MD).No.9510 of 2023

Subramanian (Died) ... Sole Plaintiff

1.S.Jeeva

2.S.Saravana Anand

3.S.Jothilakshmi

4.S.Jeevanantham ... Petitioners/Proposed Petitioners/
Proposed Plaintiffs 2 to 5 in both petitions

Vs.

N.Radhakrishnan (died)

1.R.Velumani

2.R.Manojkumar ... Respondents/Lrs of 1st Respondent
in both petitions

COMMON PRAYER : Civil Revision Petitions are filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.Nos.384 & 385 of 2020 in O.S.No.779 of 2010 on the file of the I Additional Subordinate Judge, Madurai.

For Petitioner : Mr.S.Lakshmanan



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For Respondent : Mr.M.Vallinayagam

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ORDER

This civil revision petition is filed to set aside the fair and decreetal order passed in I.A.Nos.384 & 385 of 2020 in O.S.No.779 of 2010 on the file of the I Additional Subordinate Judge, Madurai.

2.The facts in brief:

Suit in O.S.No.779 of 2010 was filed by the deceased plaintiff namely Subramanian, before the I Additional Subordinate Court, Madurai, for permanent injunction against the respondent namely Radhakrishnan. The deceased respondent namely Radhakrishnan also filed a suit in O.S.No.780 of 2010 before the very same Court. The above said fact was not known to the petitioners. Later, they came to know that both suits were ordered to be tried together, by the order of this Court, dated 21.08.2008 in C.M.A.(MD).No.158 of 2004. The first petitioner's husband namely Subramanian died on 13.12.2015, leaving the petitioners as legal heirs and representatives. The suit was dismissed for default on 14.06.2018. The above said fact came to the notice of the petitioners only on 25.10.2019, when the matter was listed for further cross



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examination of the witnesses in the connected suit in O.S.No.780 of 2010. After that on 25.10.2019, they filed two applications in I.A.No.384 of 2020 to condone the delay to file the restoration application and I.A.No.385 of 2020 to restore the suit in O.S.No.779 of 2020.

3. When the two applications were pending for orders, Radhakrishnan was reported to be dead on 30.07.2022. Again the matter was posted for filing steps. Later, on 24.11.2022, I.A.Sr.No.24950 of 2023 in I.A.No.384 of 2020 and I.A.Sr.No.24951 of 2023 in I.A.No.385 of 2020 were filed to implead the legal heirs of the deceased Radhakrishnan and periodically those two applications were returned due to some defects. Finally those two applications were dismissed by the trial Court stating that there was no representation. The mistake occurred on the side of the counsel for the petitioners in not properly representing the petitions. In fact no steps is required when I.A.Nos.384 & 385 of 2020 were posted for orders. But, however, the Court directed steps to be taken and accordingly, steps were filed. But due to the counsel's mistake, the order came to be passed by the trial Court, dismissing both the petitions.



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4.Heard both sides.

5.As mentioned in the preamble portion, there was mistake committed by the counsel on record for the revision petitioners in not properly prosecuting I.A.Sr.Nos.24950 & 24951 of 2023. Reading of the order of the trial Court shows that because of the default in taking steps for the deceased Radhakrishnan, it was dismissed for default. In fact as mentioned above I.A.Sr.Nos.24950 & 24951 of 2023 were filed by the revision petitioners. But due to mistake committed by the Advocate on record, those petitions were not represented after curing the defects.

6.Realizing this position, the learned counsel for the respondent would submit that the revision petitioner cannot blame the earlier counsel. It is for them to prosecute the matter in a diligent manner. They have failed and so they are not entitled for any indulgence. They would rely upon the following Judgments.

1.Judgment of the Honourable Supreme Court in the case of ***Pundlik Jalam Patil (D) by Lrs. Vs. Exe. Eng. Jalgaon Medium Project and***



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*another*s reported in 2008 (5) CTC 663.

2.Judgment of this Court made in **C.R.P.No.2860 of 2021** in the case of **V.Narayanasamy Vs. Vanchikodi**.

7.But as mentioned above, only after reserving the order in I.A.Nos.384 & 385 of 2020 Radhakrishnan was reported to be dead. In fact as mentioned above, there was no necessity to implead the legal heirs of Radhakrishnan at this stage. But, however, on 24.11.2022 itself, I.A.Sr.Nos.24950 & 24951 of 2023 were presented. So this shows that the revision petitioners were not interested in dragging on the matter, even though they ought to have contacted the Advocate in time as to the stage of the case.

8.But, from the facts narrated above, I am of the considered view that liberty must be given to the revision petitioners to prosecute the matter to its logical conclusion. On that score, the order passed by the trial Court is set aside. There shall be a direction to the trial Court to restore I.A.Nos.384 and 385 of 2020 to its file with liberty to the revision petitioners to represent the returned I.A.Sr.Nos.24950 & 24951 of 2023



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and may proceed in accordance with law.

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9.With the above said liberty and directions, these civil revision petitions are stands Allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.11.2024

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

1.The I Additional Subordinate Judge, Madurai.

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

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