



C.R.P.(MD)Nos.1644 and 1645 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)Nos.1644 and 1645 of 2023

C.R.P.(MD)No.1644 of 2023:

Ganesan

... Petitioner

Vs.

1.Sekar

2.The Tahsildar,
Taluk Office,
Thiruvaiyaru Taluk and Munsif,
Thanjavur District.

3.The State of Tamil Nadu,
represented by its District Collector,
Thanjavur Collector's Office,
Thanjavur Town and Munsif,
Thanjavur District.

4.The Commissioner,
Mines and Minerals Department
of Geology and Mining,
Industrial Estate,
Guindy, Chennai-600 032.

... Respondents



C.R.P.(MD)Nos.1644 and 1645 of 2023

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order, dated 20.03.2023, made in I.A.No.2 of 2022 in U/F A.S.No. of 2022 on the file of the Principal Subordinate Court, Thanjavur.

For Petitioner : Mr.A.Saravanan
For R1 : Mr.R.Murali
For R2 to R4 : Mr.V.Om Prakash
Government Advocate

C.R.P.(MD)No.1645 of 2023:

Ganesan ... Petitioner
Vs.

1.Sekar

2.The State of Tamil Nadu,
represented by its District Collector,
Thanjavur Collector's Office,
Thanjavur Town and Munsif,
Thanjavur District.

3.The Tahsildar,
Taluk Office,
Thiruvaiyaru Taluk and Munsif,
Thanjavur District.

4.The Commissioner,
Mines and Minerals Department
of Geology and Mining,
Industrial Estate,
Guindy, Chennai-600 032.

5.The Assistant Commissioner,
Mines and Minerals Collectorate,
Court Road, Thanjavur.

... Respondents



C.R.P.(MD)Nos.1644 and 1645 of 2023

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order, dated 20.03.2023, made in I.A.No.3 of 2022 in U/F A.S.No. of 2022 on the file of the Principal Subordinate Court, Thanjavur.

For Petitioner : Mr.A.Saravanan
For R1 : Mr.R.Murali
For R2 to R5 : Mr.V.Om Prakash
Government Advocate

COMMON ORDER

The Civil Revision Petition in C.R.P.(MD)No.1644 of 2023 is filed against the order passed in I.A.No.2 of 2022 in U/F A.S.No. of 2022 on the file of the Principal Subordinate Court, Thanjavur.

2. The I.A.No.2 of 2022 was filed to condone the delay of 98 days in preferring the Appeal Suit. The brief facts of the case are that the original suit in O.S.No.130 of 2011 was filed by the 1st respondent herein namely Sekar for permanent injunction not to take the river sand from his lands and the said suit was dismissed. Thereafter the 1st respondent Sekar had preferred Review Application No.182 of 2013 and after considering the same, the review



application was allowed and consequently the said suit was allowed, thereby the official respondents were restrained from taking sand from the plaintiff's land.

3. The contention of the revision petitioner is that the said suit was filed against Tahsildar, District Collector and Department of Geology and Mining and the present revision petitioner was not arrayed as party. The said suit is bad in law, since the land for which the respondent Sekar is seeking permanent injunction belongs to the revision petitioner. The revision petitioner had purchased the said property in S.No.31/2 belongs to him and he has purchased the said land from one Sivanesan, hence without impleading the revision petitioner as a party in the said suit, the 1st respondent herein has obtained an order against the revision petitioner. The further contention of the revision petitioner is that even though the order in the review application was passed in the year 2014, he came to know about the said order only in the year 2022. Thereafter, he had preferred the appeal suit along with condone delay application to condone the delay of 98 days. The respondents vehemently contested stating that the delay is not for 98 days, but a huge delay. Since the review application was ordered in the year 2014 and the suit is filed in the year 2022, the delay is more than 8 years.



WEB COPY

4. After hearing the arguments this Court had given its anxious consideration. Prima facie it is seen the property in S.No.31/2 belongs to the revision petitioner. If so, the revision petitioner is necessary party. When the 1st respondent failed to array the revision petitioner as one of the parties in the suit as well as in the review application, then it has to be concluded the judgment is passed by violating the principle of natural justice and the same is bad in law. In such circumstances, the limitation would start from the date of knowledge to the revision petitioner herein. When the revision petitioner has filed an affidavit stating that he came to know about the said decree in the year 2022 only, then the delay ought to be condoned.

5. Interestingly, there are previous litigation where the 1st defendant had lost the litigations. A suit was filed by the 1st respondent herein against the revision petitioner's vendor namely Sivanesan in O.S.No.54 of 2000 on the file of District Munsif Court, Thiruvaiyaru and the same was contested on merits. And the 1st respondent herein had lost the suit against which he preferred an appeal in A.S.No.11 of 2001. Subsequently, the 1st respondent had filed I.A.No.79 of 2001



wherein he had sought permission to withdraw the suit and to file a fresh suit and the same I.A. was allowed and the said first appeal was also dismissed as withdrawn with a liberty to file a fresh suit. The 1st respondent herein had preferred a fresh suit in O.S.No.177 of 2001 on the file of Sub Court, Thanjavur for declaration but the same was transferred and renumbered based on pecuniary jurisdiction as O.S.No.70 of 2004 on the file of District Munsif Court, Thiruvaiyaru. However, the said suit was dismissed for default. The 1st respondent herein / Sekar was contesting both the suits, knowing very well that the land belongs to the vendor of the revision petitioner. Therefore, the suit in O.S.No.130 of 2011 and Review Application No.182 of 2013 was filed without impleading the present owner / revision petitioner herein is bad in law. At least the 1st defendant ought to have impleaded the erstwhile owner in the said suit in O.S.No.130 of 2011 and Review Application No.182 of 2013. When the 1st defendant failed to implead the real owners would indicate the attitude of the 1st respondent Sekar. Further the above facts would indicate the 1st defendant had played fraud on the Courts. If the ingredient of fraud is there in the cases, then the limitation cannot be taken as defence by the person who had committed such fraud. Further in such fraud the Courts ought to protect the real owners.



Therefore, this Court is inclined to condone the delay even though it is huge delay.

6. The C.R.P.(MD)No.1645 of 2023 is similar set of facts but the original suit therein was filed for mandatory injunction. Hence the same ought to be allowed.

7. Therefore, this Court is of the considered opinion that the present civil revision petitions ought to be allowed and accordingly, the civil revision petitions are allowed. The revision petitioner is allowed to contest the case as far as his land in S.No.31/2 is concerned.

8. The Learned Counsel appearing for the 1st respondent Sekar submitted that he had filed execution petition in E.P.No.1 of 2017. This Court is of the considered opinion that the said execution petition may be proceeded with as far as S.No.36/3 is concerned but the E.P. Court is restrained from proceeding further as far as S.No.31/2.



C.R.P.(MD)Nos.1644 and 1645 of 2023

WEB COPY

9. The Appellate Court is directed to number the appeal and hear the case on merits. With the above said observations, the civil revision petitions are allowed. No costs.

23.08.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

Tmg



C.R.P.(MD)Nos.1644 and 1645 of 2023

To

WEB COPY

- 1.Principal Subordinate Court,
Thanjavur.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Tahsildar,
Taluk Office,
Thiruvaiyaru Taluk and Munsif,
Thanjavur District.
- 4.The District Collector,
Thanjavur Collector's Office,
Thanjavur Town and Munsif,
Thanjavur District.
- 5.The Commissioner,
Mines and Minerals Department
of Geology and Mining,
Industrial Estate,
Guindy, Chennai-600 032.
- 6.The Assistant Commissioner,
Mines and Minerals Collectorate,
Court Road, Thanjavur.



WEB COPY



C.R.P.(MD)Nos.1644 and 1645 of 2023

S.SRIMATHY, J.

Tmg

C.R.P.(MD)Nos.1644 and 1645 of 2023

23.08.2024