



C.R.P.(MD)Nos.1709 and 1786 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05/03/2024

CORAM

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

C.R.P (MD) Nos.1709 and 1786 of 2022

CMP (MD) No.7516 of 2024

(1) CRP (MD) No.1709 of 2022 :-

1.T.Balasubramaniam
2.T.Veluchamy
T.Periyasamy (Died)
3.T.Palanisamy
5.S.Kanthasamy
6.S.Murugasamy

: Petitioners/Petitioners/
Petitioners/Defendants

Vs.

1.Nachammal
2.Selvi

: Respondents/Respondents/
Respondents/Plaintiffs

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to call for the records and set aside the fair and executable order dated 15/06/2022 passed in the application in IA No.52 of 2020 in IA No.246 of 2013 in OS No.197 of 2007 on the file of the Principal Subordinate Court, Palani and pass such other further orders.

For Petitioners : Mr.J.Barathan

For Respondents : Mr.N.Tamil Mani



C.R.P.(MD)Nos.1709 and 1786 of 2022

2.CRP (MD) No.1786 of 2022:-

1.T.Balasubramaniam
2.T.Veluchamy
T.Periyasamy (Died)
3.T.Chinnasamy
4.T.Palanisamy
5.S.Kanthasamy
6.S.Murugasamy

: Petitioners/Petitioners/
Petitioners/Defendants

Vs.

1.Nachammal
2.Selvi

: Respondents/Respondents/
Respondents/Plaintiffs

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to call for the records and set aside the order, dated 15/06/2022 passed in the application in IA No.111 of 2019 in IA No.247 of 2013 in OS No.197 of 2007 on the file of the Principal Subordinate Judge, Palani and pass such further or other orders.

For Petitioners : Mr.J.Barathan

For Respondents : Mr.N.Tamil Mani

COMMON ORDER

CRP(MD)No.1709 of 2022 is filed seeking to set aside the fair and executable order, dated 15/06/2022 passed in IA No.52 of 2020 in IA No.246 of 2013 in OS No.197 of 2007 by the Principal Sub Judge, Palani, whereas CRP(MD)No.1786 of 2022 has been filed seeking to set aside the order, dated 15/06/2022 passed in IA No.111 of



C.R.P.(MD)Nos.1709 and 1786 of 2022

2019 in IA No.247 of 2013 in OS No.197 of 2007 by the Principal Sub Judge, Palani.

2.The facts in brief:-

A suit in OS No.197 of 2007 was filed by the respondents herein namely Nachammal and Selvi seeking the relief of partition and separate possession of their 1/3rd share. The defendants appeared, filed their written statement. After that, an *ex-parte* decree was passed, on 10/08/2011. The defendants remained *ex-parte*, even though, the suit was posted for the cross examination of PW1. After that, IA No.247 of 2013 was filed by the petitioners to set aside the *ex-parte* decree and judgment along with the application in IA No.246 of 2013 to condone the delay of 90 days. That Interlocutory application was filed under section 5 of the Limitation Act.

3.Pending further process of the above said Interlocutory applications, one Periyasamy expired. The legal heirs were not brought on record within the time stipulated, both the applications were dismissed for default, on 06/12/2018.

4.Later, IA No.52 of 2020 in IA No.246 of 2013 and



C.R.P.(MD)Nos.1709 and 1786 of 2022

IA No.111 of 2019 in IA No.247 of 2013 were filed to condone the delay of 38 days in restoration. Those applications came to be dismissed by the trial court.

5.Against which, these two civil revision petitions are preferred.

6.Heard both sides.

7.The suit is of the year 2007. According to the learned counsel appearing for the petitioners, the earlier suit for partition was filed in OS No.234 of 1970 by the respondents before the District Munsif Court, Palani. In that suit, Chokkalingam was impleaded as the second defendant. Chokkalingam disputed the relationship stating that the plaintiffs were not the wife and daughter. That suit was dismissed for default, on 25/07/1972. Thereafter, no process was taken by the plaintiffs. So that need not be taken into account in these petitions. That sort of argument ought to have been raised before the trial court at the time of passing the preliminary decree.



WEB COPY



C.R.P.(MD)Nos.1709 and 1786 of 2022

8.Since, the suit was posted for cross examination of PW1, the petitioners remained set *ex-parte*, As mentioned above, *ex-parte* decree and judgment was passed.

9.Now the problem lies in dismissing IA Noss.246 and 247 of 2013 on the ground that the legal heirs of the deceased Periyasamy were not brought on record. Both petitions were dismissed for default. If the legal heirs of the Periyasamy were not brought on record, the petitions ought to have been dismissed as abated only against the Periyasamy. Dismissing the petitions in entirety for default is not proper.

10.Now another problem arises in dismissing IA Nos.111 of 2019 and 52 of 2020.

11.Now we will see the reasoning of the order assigned by the trial court. The trial court was of the view that even in these petitions, the legal heirs of the Periyasamy were not impleaded. The trial court would have dismissed the petition filed by the deceased Periyasamy. In respect of others, it ought to have decided the matter on its own merit. But again, the trial court came to the conclusion that those two petitions are not maintainable. This is not proper.



C.R.P.(MD)Nos.1709 and 1786 of 2022

WEB COPY

12.The order passed by the trial court suffers from not only illegality, but also irregularity. Even without impleading the legal heirs of Periyasamy, again two petitions came to be filed by the petitioners. So according to the petitioners, it is improper. But when that was brought to the notice of the trial court, the petitions filed without impleading the legal heirs of Periyasamy, either ought to have been directed the petitioners to file the legal heirs application for the deceased Periyasamy or would have dismissed the petitions as abated. But again the trial court committed the very same mistake, which is not proper.

13.Now the legal heirs of the Periyasamy have been impleaded in these revisions. So, this is a curable defect already committed by the petitioners. The only course available is that the trial court may direct the petitioners to file amendment petition. After the said process is over, the matter must be decided on its own merits within a period of one month considering the oldness of the matter.



C.R.P.(MD)Nos.1709 and 1786 of 2022

14. With the above said observation and direction,
both the civil revisions are **disposed of**. No costs.
Consequently, connected Miscellaneous Petition is closed.

05/03/2024

Index: Yes/No
Internet: Yes/No
er

To,

1. The Principal Sub Court,
Palani.

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



WEB COPY



C.R.P.(MD)Nos.1709 and 1786 of 2022

G.ILANGOVAN, J

er

C.R.P (MD) Nos.1709 and 1786 of 2022

05/03/2024