



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)Nos.1584 and 1585 of 2015

and

M.P.(MD)No.1 of 2015 and C.M.P.(MD)No.10797 of 2016

C.R.P(MD)No.1584 of 2015:-

- 1.Meenalochani @ Meena (Died)
 - 2.Marimuthu @ Kannan
 - 3.Shanthi
 - 4.S.Nagarajan
 - 5.Vignesh Meenakshi Sundaram
- ... Petitioners

-VS.-

- 1.G.Sarathamani
 - 2.Dr.G.Sundara Vadivel
- ...Respondents

(Petitioners 4 and 5 were brought on records as legal representatives of the deceased first petitioner vide order of this Court, dated 07.10.2019 in C.M.P. (MD)No.5079 of 2019)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order passed in I.A.No.757 of 2012 in O.S.No.646 of 2010, dated 23.06.2015 on the file of the III Additional Subordinate Court, Madurai.



WEB COPY

For Petitioners :Mr.V.Balaji
R1 :Died
For R2 :Mr.L.Siva

C.R.P(MD)No.1585 of 2015:-

- 1.Meenalochani @ Meena (Died)
- 2.Marimuthu @ Kannan
- 3.Shanthi
- 4.S.Nagarajan
- 5.Vignesh Meenakshi Sundaram

... Petitioners

-VS.-

- 1.Sivasankari
- 2.Vijayasundar @ Dhennan (Died)
- 3.Karthikeyan
- 4.Sivakumari
- 5.Arunakaviya

...Respondents

(Petitioners 4 and 5 were brought on records as legal representatives of the deceased first petitioner vide order of this Court, dated 07.10.2019 in C.M.P. (MD)No.5080 of 2019)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order passed in I.A.No.758 of 2012 in O.S.No.646 of 2010, dated 23.06.2015 on the file of the III Additional Subordinate Court, Madurai.

For Petitioners :Mr.V.Balaji
R1 and R2 :Died



WEB COPY

COMMON ORDER

Both the Civil Revision Petitions have been filed challenging the impugned orders passed in I.A.Nos.757 and 758 of 2012 in O.S.No.646 of 2010, dated 23.06.2015 by the learned III Additional Subordinate Judge, Madurai.

2.The Civil Revision Petitions have been filed by the plaintiffs in the suit in O.S.No.646 of 2010 before the III Additional Subordinate Court, Madurai. The suit was filed for partition. When the suit was posted for trial and PW-1 was examined in chief, the defendants 12 and 13 in the suit did not take any steps to cross examine PW-1 and they set *ex parte* vide order, dated 18.10.2011. Hence, the defendants 12 and 13 have filed an application I.A.No. 757 of 2012 to set aside the *ex parte* order passed against them with the delay of 157 days. Similarly, as the defendants 1 to 3 did not take any steps to file their written statements, they were are also set *ex parte* vide order, dated 18.10.2011. Hence, they filed an application in I.A.No.758 of 2012 to set aside the *ex parte* order with the delay of 309 days. The trial Court has allowed both the applications vide impugned orders and challenging the same,



the plaintiffs have filed the present Civil Revision Petitions.

3.Mr.V.Balaji, learned Counsel appearing for the Revision Petitioners contended that in the affidavit filed in I.A.No.757 of 2018 by the defendants 12 and 13, they contended that they have gone to Karnataka, however, from the information obtained from the Right to Information Commission in a proceedings in Case No.10682/SCIC/2014, they contended that their Advocate himself has gone to Karnataka, which was demonstrated that it was an utter falsehood before the trial Court.

4.Similarly, in I.A.No.758 of 2012, the defendants 1 to 3 had only stated that due to old age, they could not file an application and therefore, there was a delay of 309 days. Except the reasons adduced that it is due to old age and health issue they could not appear before the Court, they have not given any valid reasons to set aside the *ex parte* order. Hence, the learned Counsel for the Revision Petitioner/plaintiffs prays to set aside the impugned orders passed by the trial Court.



WEB COPY

5.It is seen from the records that the first respondent in C.R.P(MD)No. 1585 of 2015 is no more and her legal heir is already on record as second respondent. It is also seen that the second respondent in C.R.P.(MD)No.1585 of 2015 had died during the pendency of this revision and by way an application, his legal heirs were added as respondents 4 and 5. Since they did not appear, paper publication was effected and the service is considered as a deemed service.

6.Admittedly, it is a partition suit between the parties. The Revision Petitioners/plaintiffs and the respondents/defendants are relatives. The learned Counsel appearing for the respondents/defendants contended that due to lack of communication between the Counsels and the party, some mistakes have crept in. If the mistake committed due to communication gap, that should not affect the rights of the defendants, as it relates to the partition suit.

7.It is unfortunate to see that the Revision Petitioners have brought the falsehood of the petition filed by the defendants 12 and 13 before the trial Court and in the application filed by the defendants 12 and 13, the parties are



expected to give the true version to the Counsels and the Counsels are also expected to file their applications based on the information given by the clients. When a contra statement is placed before the Court and it was demonstrated by the Revision Petitioners/plaintiffs, such an act of neither the party nor the Counsel may not be appreciated and this Court expresses its strong displeasure for the conduct of the Counsel, who appearing for the defendants 12 and 13. This Court is also of the opinion that the reasons given by the defendants 1 to 3 in the application filed by them are not acceptable and hence, the orders passed by the trial Court needs interference.

8. In view of the same, the orders passed in I.A.Nos.757 and 758 of 2012 in O.S.No.646 of 2010, dated 23.06.2015 by the learned III Additional Subordinate Judge, Madurai, are set aside and the Civil Revision Petitions are allowed. As the case relates to partition suit, the respondents are directed to pay a sum of Rs.10,000/- to the learned Counsel for the Revision Petitioners and the trial Court before taking cognizance of the application shall ensure that such amount is paid to the learned Counsel for the Revision Petitioners by the respondents herein. As the suit is of the year 2012, the trial Court is directed to



WEB COPY

conclude the trial within a period of one year from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

16.12.2024

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

cmr

To

The III Additional Subordinate Judge, Madurai.



WEB COPY



N.SENTHILKUMAR, J.

cmr

C.R.P.(MD)(PD)Nos.1584 and 1585 of 2015

16.12.2024