



C.R.P(MD)No.1907 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1907 of 2022

and

C.M.P(MD)No.8620 of 2022

Ayyappan

... Petitioner/Petitioner

Vs.

Suseely (Died)

Thassayya (Died)

Victoria (Died)

Edwin Fred Dennis (Died)

Vincent Lurie Dennis (Died)

Joice (Died)

1.Godson

Rethina Bai (Died)

2.Karuna Bai

Bernaud (Died)

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3.Jolice

4.Vayala Eestus

5.Thanka Bai

Jayaraja Edward (Died)

6.Jashmin Pushpa Darling

7.Vinoj Fernard

8.Ajith Fernard

9.Mary Innagulate

10.Gathreena Nish

11.Kaduthal Thampi Suresh

12.Richal Anantha Bai

13.Godwin Nobel

14.Benjamin Benco

15.Rakshelin Sheeba

16.Alexandar

17.Florance Alex

18.Jose Alex

19.Joy Alex

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Chellappan Pillai (Died)

20.Lekshmi

21.Subramonian

22.Padmanabha Pillai

23.Leela

24.Rajeswari

25.Murugan

26.Remma

27.Chithambarathanu Amma

28.Thirumalayappa Pillai

29.Arumughom Pillai

Nagamony Pillai (Died)

30.Vanaja Sreekandan

31.Senior Superintendent of Post Office,
Kanyakumari District,
Nagercoil.

32.The Sub Post Master,
L.L.G Marthandam.

33.David Raj

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34.Paul Daniel

35.Rajani

36.Methul

37.Piralap

... Respondents/Respondents

(Memo, dated 15.02.2024 in USR No.5933 is recorded to the effect that issuance of notice to respondents 20 to 34, 36 and 37 is dispensed with, vide Court order, dated 15.02.2024 made in C.R.P(MD)No.1907 of 2022)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order, dated 11.08.2022 passed in E.A.No.9 of 2022 in E.P.No. 55 of 2014 in O.S.No.896 of 1971 on the file of the Principal District Munsif, Kuzhithurai and allow this Civil Revision with costs.

For Petitioner : Mr.G.Prabhu Rajadurai

R-1 to R-11 &
R-13 to R-37 : Dispensed with

For R-31 & R-32 : Mr.S.Jeyasingh
Senior Panel Counsel of India



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ORDER

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The instant revision petition has been filed by the petitioner in E.A.No.9 of 2022, wherein the Executing Court had rejected an application to restore E.A.No.127 of 2017, which was dismissed for default.

2. The revision petitioner herein is a third party to O.S.No.896 of 1971. The said suit was filed by one Abraham and his three daughters for the relief of redemption of mortgage. Pending suit, the legal heirs of Boothalingam Pillai have sold the suit schedule property on 18.09.1989 in favour of one Fathuma and Mahaboob Nisha. The said Fathuma and Mahaboob Nisha have sold an extent of 160 square feet in favour of one Chellappa by a document, dated 21.09.1995. By document, dated 29.10.1996, Chellappa sold it to Ayyappan, present revision petitioner.

3. According to the learned Counsel appearing for the revision petitioner, after alienating the properties, the legal heirs of Boothalingam Pillai have not defended the suit and therefore, an *ex parte* preliminary



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decree came to be passed on 03.01.2001. A final decree came to be passed on 10.12.2013. Based upon the final decree, the decree holder has filed E.P.No.55 of 2014 for taking possession of the property. When the execution proceedings were pending, the present revision petitioner has filed E.A.No.127 of 2017 under Section 47 of Civil Procedure Code on the ground that, the decree is in-executable in view of the fact that, the suit itself was barred by limitation and in view of the judgment of this Court in S.A.No.1694 of 1990, dated 03.11.1998.

4. While E.A.No.127 of 2017 was pending and it was posted on 14.02.2022 for hearing, the revision petitioner has not appeared and the same came to be dismissed for default on the said date. For restoring the said E.A.No.127 of 2017, the revision petitioner had filed E.A.No.9 of 2022 in time. However, the said application has been dismissed by the Executing Court. Challenging the same, the present revision petition has been filed.



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5. According to the learned Counsel appearing for the revision petitioner, the observations of the Trial Court with regard to the fact that they have not co-operated for the hearing is not correct and in view of the ill health of the petitioner, the proceedings could not be conducted. The fact that the suit was pending for more than 50 years is not due to the fault on the part of the revision petitioner. The petitioner has only filed under Section 47 of CPC., immediately after coming to know of the pendency of the suit. In fact, the said suit is barred by limitation and it is also barred under the principles of *res judicata*, in view of the orders of this Court in S.A.No.1694 of 1990.

6. Though the respondents have been served, there is no appearance on their side.

7. I have carefully considered the submissions made on the side of the revision petitioner and perused the materials available on record.



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8. Though the application to restore E.A.No.127 of 2017 has been filed in time, the Trial Court has dismissed the application primarily on the ground that, the suit is pending for more than 50 years and the petitioner is not co-operating for the conclusion of the proceedings in E.P.No.55 of 2014.

9. This Court is of the considered view that, the present application has been filed by a person claiming under the judgment debtor. He has filed the present application in E.A.No.127 of 2017 under Section 47 CPC., on the ground that, the decree is in-executable. Therefore, he cannot be blamed for the delay in the proceedings. In such circumstances, the order of the Trial Court is liable to be set aside and the same is set aside. E.A.No.127 of 2017 is restored to file. The Trial Court is directed to dispose of E.A.No.127 of 2017 on or before **31.12.2024.**



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WEB COPY 10. With the above said observation, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

08.07.2024

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

To

- 1.The Principal District Munsif,
Kuzhithurai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Senior Superintendent of Post Office,
Kanyakumari District,
Nagercoil.
- 4.The Sub Post Master,
L.L.G Marthandam.

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R.VIJAYAKUMAR, J.

BTR

Order made in
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