

C.R.P(MD).No.911 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 21.03.2024

CORAM:

**THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN**

C.R.P.(MD).No.911 of 2015

S.Baskaran

... Petitioner

Vs.

A.Devaki (died)

2.T.S.Sankaranarayanan

3.M.S.Govindan

4.S.Boominathan

5.R.Pushpavalli

6.S.Udaimalai

7.R.Revathi

8.P.Chellamuthu

9.A.Samuthiram

10.N.Asokan

11.Tamaraiselvan

12.Logameena

... Respondents

*(Respondents 10 to 12 are brought on record as LRS of the deceased 1<sup>st</sup> Respondent vide Court order dated 21.03.2024 made in C.M.P(MD).Nos. 7008 to 7010 of 2018 in C.R.P(MD).No.911 of 2015)*



C.R.P(MD).No.911 of 2015

**Prayer** : Civil Revision Petition has been filed under Article 115 of C.P.C. praying to allow the Civil Revision Petition and set aside the order dated 14.12.2009 passed in I.A.No.464 of 2009 in O.S.No.125 of 2004 on the file of the learned District Munsif Court, Paramakudi, Ramanathapuram District.

For Petitioner : Mr.S.Prabhu

For Respondents : Mr.K.Govindarajan (for R2,3 5 to 9)

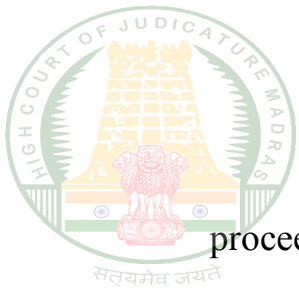
R1-died

No appearance (for R4)

### **ORDER**

This civil revision petition has been filed to set aside the order dated 14.12.2009 passed in I.A.No.464 of 2009 in O.S.No.125 of 2004 by the learned District Munsif Court, Paramakudi, Ramanathapuram District.

2.According to the plaintiff, they are the co-sharers of the suit scheduled property through the ancestor namely Vellaiamma. It is further averred that the portion of the property was also acquired by the Government and in the acquisition proceedings, they also participated. Against which, the said L.A.O.P.No.15 of 1982 was filed and in the said



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proceedings, they also participated. They have *prima facie* title and they are entitled for a share in the suit scheduled property. He filed suit for share.

The contesting defendants 4, 5 and 7 to 9 filed written statement denying the entitlement of the petitioner's share in the suit scheduled property and also they took various pleas including non joinder of necessary parties. At this stage, the suit was dismissed for default on 03.08.2005. Thereafter, he filed a petition in I.A.No.464 of 2009 to restore the suit with a delay of 1370 days. In the petition, it is stated that he went to Chennai to earn for his livelihood. Hence, he had no knowledge about the dismissal of the suit. The said application was contested by the contesting respondents herein stating that the reason was not properly proved and at every stage, he approached this Court with delay. In the said circumstances, the said contention was accepted by the learned trial judge by passing the fair and decreetal order in I.A.No.464 of 2009 dismissing the application and declined to condone the delay of 1370 days. Challenging the same, the petitioner filed this petition.

3.The learned counsel appearing for the petitioner submitted that in the petition, he averred that he went to Chennai for his livelihood. The said



C.R.P(MD).No.911 of 2015

reason is bona fide. The same was not properly considered by the learned trial judge. The learned trial Judge considering the relief claimed in the suit for partition ought to have allowed the petition to condone the delay. Hence, he seeks to allow this petition.

4.The learned counsel appearing for the respondents reiterated the reason assigned by the learned trial Judge and also filed counter before the Court below. Hence, he seeks for dismissal on the ground that the petitioner has not substantiated the delay in the affidavit and the same was rightly dismissed.

5.This Court considered the rival submission made by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and also perused the materials available on record and impugned order.

6.The suit was filed for the partition claiming  $\frac{1}{4}$  share. In the plaint, it is averred that he was entitled a share in the suit scheduled property. The defendants also filed a written statement denying their share and also raised



C.R.P(MD).No.911 of 2015

many issues. In the said circumstances, the suit filed by the plaintiff is to be decided on merits. In this case, the entitlement is to be decided while adjudicating the suit. Considering the nature of the plaint and the reason for the delay being probable, this Court inclines to accept the reason and set aside the order passed in I.A.No.464 of 2009 on payment of cost on the principle that if the delay is condoned, the other side should be compensated properly.

7. Accordingly, this civil revision petition is allowed with the following directions:

7.1. The order passed in I.A.No.464 of 2009 in O.S.No.125 of 2004 by the learned District Munsif Court, Paramakudi, Ramanathapuram, is set aside on condition to pay a total cost of Rs.15,000/- to the contesting defendant Nos.2, 3, 5 to 7.

7.2. The learned trial Judge is hereby directed to dispose of the case in O.S.No.12 of 2004 within a period of six months from the date of hearing.



C.R.P(MD).No.911 of 2015

7.3.This Court hereby directs the petitioner and the respondents to co-operate with the trial.

7.4.It is open to the respondents to raise all the defence before the learned trial Court.

**21.03.2024**

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



C.R.P(MD).No.911 of 2015

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- 1.The District Munsif Court,  
Paramakudi, Ramanathapuram District.
- 2.The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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C.R.P(MD).No.911 of 2015

**K.K.RAMAKRISHNAN, J.,**

*vsg/sbn*

**C.R.P.(MD).No.911 of 2015**

**Dated: 21.03.2024**