



C.R.P.(NPD)(MD) Nos.2313 and 2314 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD) Nos.2313 and 2314 of 2018

and

C.M.P(MD) No.10332 of 2018 in C.R.P(MD) No.2313 of 2018

C.R.P(NPD)(MD) No.2313 of 2018:

1. Karthikeyan

2. Saravanan

... Revision Petitioners/Petitioners/
Defendants 1 and 3

-vs-

1. Karuppaiah Konar (died)

... Respondent/Respondent/Plaintiff

2.Theertham

3. Periamarudhu

4. Chinna Marudhu

... Respondents

(Respondents 2 to 4 are brought on record as
LRs of the deceased sole respondent vide
order of this Court dated 15.09.2023 made
in C.M.P(MD) Nos.7041, 7042 and 7045 in
C.R.P(MD) No.2313 of 2018.

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C,
challenging the impugned fair and decretal orders passed by the District
Munsif Court, Aruppukottai in I.A.No.1925 of 2017 in O.S.No.233 of 2012,
dated 05.07.2018.



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C.R.P.(NPD)(MD).Nos.2313 and 2314 of 2018

For Petitioners : Mr.R.Shankar Ganesh

For Respondents : Mr.S.Parthasarathy
for R2 to R4

C.R.P(NPD)(MD) No.2314 of 2018:

1. Karthikeyan
2. Saravanan ... Revision Petitioners/Petitioners/
Defendants 1 and 3
-vs-

1. Karuppaiah Konar (died) ... Respondent/Respondent/Plaintiff

2.Theertham

3. Periamarudhu

4. Chinna Marudhu ... Respondents

(Respondents 2 to 4 are brought on record as
LRs of the deceased sole respondent vide
order of this Court dated 15.09.2023 made
in C.M.P(MD) Nos.10709 to 10711 of 2023
in C.R.P(MD) No.2314 of 2018)

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C,
challenging the impugned fair and decreetal orders passed by the District
Munsif Court, Aruppukottai in I.A.No.1926 of 2017 in O.S.No.233 of 2012,
dated 05.07.2018.

For Petitioners : Mr.R.Shankar Ganesh

For Respondents : Mr.S.Parthasarathy
for R2 to R4



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COMMON ORDER

The present Civil Revision Petitions have been filed by the defendants 1 and 3 in a suit for declaration of title and permanent injunction.

2. When the suit was posted for filing of written statement, the defendants were set *ex parte* and an *Ex parte* decree came to be passed on 27.06.2013. The defendants had filed I.A.No.29 of 2014 to condone the delay of 1023 days in filing an application to set aside the *Ex parte* decree. The said application was allowed by the trial Court on 09.01.2015 directing the defendants to pay a cost of Rs.1000/- on or before 23.01.2015. Since the cost was not paid in time and the counsel has not appeared on that day, the said application was dismissed.

3. Thereafter, the defendants had filed I.A.Nos.1925 and 1926 of 2017 to condone the delay in filing the restoration application and to restore the I.A.No.29 of 2014. A perusal of the affidavits filed in support of the applications indicate that though the defendants were aware of the imposition of cost for allowing I.A.No.29 of 2014, they were not able to pay the said cost



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on the ground that the first defendant was affected with jaundice and he was taking native treatment and therefore, he could not contact his counsel. A perusal of the affidavits further reveal that there is a delay of 1023 days in filing the application to restore I.A.No.29 of 2014.

4. The trial Court after considering the reasons assigned by the defendants 1 and 3 and the counter filed by the plaintiff had arrived at a finding that the reasons are not believable and they were not sufficient cause for allowing the condone delay application. Thereafter, the trial Court has proceeded to dismiss those applications. Challenging the same, both the Civil Revision Petitions have been filed.

5. The learned counsel appearing for the Revision Petitioners had contended that the defendants are having a good case and therefore prayed for granting an opportunity to defend the proceedings. The delay has happened only due to the illness on the part of the first defendant and thereby the delay is neither willful nor wanton. Hence, he prayed for allowing both the revision petitions by fixing a time frame to dispose of the suit.



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6. Per contra, the learned counsel appearing for the Legal Heirs of the plaintiff/ respondents had contended that originally the defendants have not even filed the written statement and they were set *ex parte*. There was a delay of 1023 days in filing the application to condone the delay but the delay was condoned by the trial Court on payment of cost. The defendants have neither paid the cost nor filed any application to restore I.A.No.29 of 2014. Therefore, the defendants are dragging the proceedings and the order passed by the trial Court may be sustained.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The facts narrated above would clearly indicate that the trial Court has allowed the petition filed by the petitioners for condoning the delay of 173 days on payment of cost of Rs.1,000/- within a period of two weeks. However, the petitioners have not utilized the opportunity to pay the cost and no application was filed seeking extension of time for payment of cost. After



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a period of three years, the present application has been filed to restore the application in I.A.No.29 of 2014. The reasons assigned in the said affidavit that they were not able to contact the counsel for a period of three years is not believable. Therefore, the trial Court has rightly dismissed these applications. Hence, this Court is of the opinion that there is no merits in these applications.

9. Accordingly, this Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

01.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The District Munsif Court,
Aruppukottai.



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R.VIJAYAKUMAR,J.

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