



**C.R.P. (NPD) (MD).No.1337 of 2018**

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 24.07.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**C.R.P.(NPD)(MD)No.1337 of 2018**

Bhukaria Matriculation Higher Secondary School,  
Devipattinam,  
Ramanathapuram District,  
Represented through its Manager.

... Petitioner/Petitioner/  
Appellant

**-vs-**

1. Bismillah Khan (Died)
2. The Government of Tamil Nadu,  
Represented through  
The District Collector,  
Ramanathapuram District,  
Office of the District Collector,  
Ramanathapuram.
3. The Tahsildar,  
Office of the Tahsildar,  
Vandikara Street,  
Ramanathapuram District.

... Respondents1 to 3/  
Respondents/  
Respondents

4. Fathima
5. Sheik Dawood
6. Mohamed Ansar



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7. Hakeem Sait  
8. Haaris  
9. Mubaris

... Proposed Respondents

(Respondents 4 to 9 are brought on record as legal Heirs of the deceased 1<sup>st</sup> respondent vide order of this Court dated 07.06.2024 made in C.M.P(MD)No. 8131 to 8133 of 2021 in C.R.P(MD) No.1337 of 2018)

**PRAYER:** Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, as against the fair and executable order dated 12.02.2018 passed in I.A.No.92 of 2015 in U.F.A.S.No.....of 2014 on the file of the Subordinate Court, Ramanathapuram.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.C.Satheesh  
Government Advocate  
for R2 and R3

: No appearance – R4 to R9  
: Died - R1

### **ORDER**

A third party to O.S.No.33 of 2003, on the file of the District Munsif Court, Ramanathapuram is the revision petitioner. The said suit was filed by the first respondent herein for the relief of declaration of title and permanent



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injunction arraying the District Collector, Ramanathapuram and the Tahsildar, Ramanathapuram as defendants. The suit was decreed as prayed for by the trial Court, on 25.02.2011.

2. The revision petitioner herein, who is a third party to the suit had filed an unnumbered first appeal before the Sub Court, Ramanathapuram, challenging the decree passed in O.S.No.33 of 2003. Seeking permission of the Court to file an appeal, the revision petitioner herein has filed I.A.No.92 of 2015. The said leave application has been dismissed by the first appellate Court on the following grounds:

(a) The petitioner/appellant being a third party to the suit he cannot question the correctness of the judgment and decree of the trial Court.

(b) The petitioner has not placed on record any specific pleadings or documents to show that he has got any right over the suit schedule property.

(c) The petitioner has already filed O.S.No.164 of 2014, before the District Munsif Court, Ramanathapuram, as against the decree holder.

Therefore, he has to seek his remedy only in the said suit and he cannot file an appeal as against the decree in O.S.No.33 of 2003. Challenging the said order, the present Civil Revision Petition has been filed by the third party



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in the suit.

3. According to the learned counsel appearing for the revision petitioner, the suit schedule property belongs to the Government and by an order dated 01.10.1991, the same has been leased to the revision petitioner's School for a period of 10 years. Later, the lease has been extended till 05.03.2022. Even after the expiry of the lease period, the Government continues to receive annual rent from them. According to them, they are regularly paying the annual rent to the Government without any default. The plaintiff in the said suit had suppressed the fact that the subject matter of the suit property has been leased out by the Government to the revision petitioner's School and has managed to get a decree for declaration of title and permanent injunction. Based upon the said decree, when the decree holder attempted to disturb the possession, a separate suit came to be filed by the present revision petitioner's School in order to protect the possession. Unless, the decree passed in favour of the plaintiff is set aside and the title of the Government is upheld his right to be in possession would get affected. The first appellate Court was not right in dismissing the application.



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4. The learned Government Advocate appearing for the official respondents submitted that the suit schedule property belong to the Government and they have leased out the same to the revision petitioner's School. Challenging the said decree they have also preferred an appeal before the Sub Court, Ramanathapuram with a delay of 1488 days. The said application for condoning the delay has been dismissed and they have filed an independent Civil Revision Petition before this Court with a delay of 72 days and the same is pending.

5. The decree holder, who is arrayed as the first respondent had passed away and his legal heirs have already been brought on record. Though the legal heirs of the deceased, received notice from this Court and their names are printed in the cause list, they have not chosen to appear either in person or through their counsel.

6. The learned counsel appearing for the revision petitioner has placed on record all the Government orders relating to the granting of lease to the School right from 01.10.1991 and the payment of annual rent upto the date of hearing of this revision petition. Therefore, it is clear that the revision



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petitioner's School has established their right to file an appeal, challenging the decree passed in O.S.No.33 of 2003. The suit in O.S.No.164 of 2014 would only protect the possession of the plaintiff, but the decree in O.S.No.33 of 2003 would stare upon the petitioner in conducting O.S.No.164 of 2014. The first appellate Court was not right in arriving at a finding that the petitioner being a third party is not bound by the decree. Section 96 of C.P.C., enables any person aggrieved by the decree of the trial Court, to file a first appeal. The right to file an appeal is not restricted to a party to the suit. Therefore, the trial Court's observations are not legally sustainable.

7. In the affidavit filed in support of the petition in I.A.No.92 of 2015, the revision petitioner has pointed out that they had knowledge about the passing of the decree only when they received a private notice from the High Court counsel in W.P.No.13100 of 2013, which was filed by the decree holder for mutation of revenue records in his favour, based upon the decree in O.S.No.33 of 2003. The notice has been received by the petitioner's School on 24.07.2014 and the present application seeking leave of the first appellate Court has been filed on 27.08.2014, within a period of four weeks. Therefore, this Court does not find that there is any inordinate or unexplained delay on



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the part of the revision petitioner's School in approaching the appellate Court, seeking leave of the Court.

8. In view of the above said facts, the order passed by the Sub Court, Ramanathapuram in I.A.No.92 of 2015, dated 12.02.2018 is hereby set aside and leave is granted to the revision petitioner's School to file the first appeal and proceed in accordance with law.

9. With the above said observation, this Civil Revision Petition stands allowed. There shall be no order as to costs.

**24.07.2024**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes / No  
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To  
1. The Subordinate Court,  
Ramanathapuram.



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2. The District Collector,  
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3. The Tahsildar,  
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**R.VIJAYAKUMAR,J.**

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