



C.R.P.(MD)No.2484 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.2484 of 2024

S.Periyasamy

... Petitioners

Vs

1.M.Nagalakshmi

2. M.S.Rajagopal

3. R.Palaniammal

4. S.Rajendran

[1 to 4 respondents are represented through their Power Agent G.Palanikumar]

5. T.K.Venkatesh

[Represented through his Power agent T.V.Krishnan]

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 01.08.2024 passed in I.A.No. 644 of 2023 in O.S.No.569 of 2016 on the file of the III Additional Sub Court, Madurai, and allow the Civil Revision Petition.



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For Petitioners : Mr.S.Jeyasingh
For Respondents : M/s.GR.Balakumar, for R-1
R-5 No appearance

ORDER

This Civil Revision petition is filed by the plaintiff in the suit to set aside the Fair and Decreetal order, dated 01.08.2024 passed in I.A.No.644 of 2023 in O.S.No.569 of 2016 on the file of the III Additional Sub Court, Madurai.

2. The plaintiff in the suit is the revision petitioner herein and the defendants in the suit are the respondents herein. For sake of convenience, the parties shall be referred to as plaintiff and defendants as per the ranking in the suit.

3. The suit in O.S.No.569 of 2016 was filed by the plaintiff for declaration to declare that the suit schedule property belonging to him and consequentially recover the encroachment portion in item No.1 of the suit



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schedule property and mandatory injunction to measure the west and north up to 20 feet in common pathway in item No.2 of the suit schedule property. But the suit was dismissed for default and thereafter plaintiff filed petition to restore the suit in I.A.No.644 of 2023 in O.S.No.569 of 2016 along with petition to condone the delay of 696 days under Section 5 of the Limitation Act.

4. The contention of the defendants is that the suit was filed in the year 2016, then notice was served to defendants. The defendants have filed written statement. Thereafter the suit was taken for Trial. The case was posted for filing proof affidavit by the plaintiff, but the plaintiff had failed to do so. On perusing the 'B' diary, the case was posted for trial for many years but the plaintiff has not come forward to conduct trial. Thereafter, the Trial Court finally had dismissed the suit for default. Then the plaintiff has filed restoration petition along with petition to condone the delay of 696 days. If the period is taken from the date of 'ready for trial', then the delay would be more than 1400 days.



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5. The Learned Counsel appearing for the plaintiff submitted that the suit was dismissed for default during the period of COVID-2019, otherwise the plaintiff was ready to conducting the Trial. Since the issue involved is common pathway, this Court is inclined to allow the Civil Revision Petition, however with some costs.

6. Accordingly, this Civil Revision Petition is allowed. The plaintiff is directed to pay Rs.7,500/- to the Learned Counsel appearing for the defendants. On such payment, the Additional Sub Judge, Madurai, is directed to restore the suit in O.S.No.569 of 2016 on file and complete the Trial proceedings and pass Judgment, within a period of one year from the date of receipt of a copy of the order. The plaintiff is directed to cooperate with the trial and attend further hearings in future without fail.

29.10.2024

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



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To

- 1.The Additional Sub Court, Madurai,
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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