



C.M.A.No.806 of 1998 and C.R.P.NPD.No.1569 of 1998

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.01.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.806 of 1998 and C.R.P.NPD.No.1569 of 1998

and

M.P.(MD).Nos.1, 1 of 2011, C.M.P.Nos.7460 of 1998, 16003 to
16005 of 1999 and C.M.P.(MD).No.6450 of 2016

C.M.A.No.806 of 1998

Lakshmikanthan

.. Appellant/Petitioner/2nd Defendant

Vs.

1.Kamalam

2.Saradha

.. Respondents 1 & 2/Respondents 1 & 2/
Plaintiffs 1 & 2

3.Dhandapani (Died)

.. 3rd Respondent/3rd Respondent/
1st Defendant

4.Thulasi

5.Vedavalli

.. Respondents 4 & 5/Respondents 4 & 5/
Defendants 3 & 4

6.T.Hamsa

7.T.Vijai Anand



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8.R.Manjula

9.T.Monica

(R-6 to R-9 are brought on record as LR's of the deceased 3rd respondent vide Court order dated 20.01.2003 made in C.M.P.Nos.16006 to 16008 of 1999 in C.M.A.No.806 of 1998)

10.K.Rangarajan

.. Respondents 6 to 10

(R-10 impleaded as party respondent vide Court order dated 15.03.2010 made in M.P.(MD).No.1 of 2010 in M.P.SR(MD).No.8164 of 2010 in C.M.A.No.806 of 1998)

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1.R. of Civil Procedure Code, against the fair and decretal order dated 16.02.1998 made in unnumbered I.A.SR.No.870 dated 24.07.1996 in O.S.No.373 of 1995 on the file of the Sub Court, Kulithalai.

For Appellant : Mr.Ponnupandi
for M/s.Sarvabhauman Associates

For Respondents : Mr.Muthugeethaiyan for R-10
No appearance for R-1, R-2 & R-4
R-3 Died
R-5 Left

C.R.P.NPD.No.1569 of 1998

Lakshmikanthan

.. Revision Petitioner/Petitioner/
2nd Defendant



C.M.A.No.806 of 1998 and C.R.P.NPD.No.1569 of 1998

Vs.

1.Kamalam

2.Saradha

.. Respondents 1 & 2/Respondents 1 & 2/
Plaintiffs 1 & 2

3.Dhandapani (Died)

.. 3rd Respondent/3rd Respondent/
1st Defendant

4.Thulasi

5.Vedavalli

.. Respondents 4 & 5/Respondents 4 & 5/
Defendants 3 & 4

6.K.Rangarajan

.. 6th Respondent

(R-6 impleaded as party respondent vide Court order dated 04.03.2010 made in M.P.(MD).No.1 of 2010 in M.P.SR(MD).No.8166 of 2010 in C.R.P.No.1569 of 1998)

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, praying to set aside the order and decretal order of the Subordinate Judge of Kulithalai dated 16.02.1998 made in I.A.No.439 of 1996 in O.S.No.373 of 1995.

For Petitioner : Mr.Ponnupandi
for M/s.Sarvabhauman Associates

For Respondents : Mr.Muthugeethaiyan for R-6
No appearance for R-1, R-2 & R-4
R-3 Died



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COMMON JUDGMENT

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The applications to condone the delay of 121 days in representation pending for 25 years and the reason for such a huge delay needs a dispassionate introspection.

2. A suit for partition as an indigent filed in the year 1990 in O.S.No. 776 of 1991 by the two sisters against the two brothers and remaining two sisters. The suit was re-numbered as O.S.No.373 of 1995 and allowed *ex parte* by the Sub Court, Kulithalai on 26.03.1996. Thereafter, an application to set aside the *ex parte* decree with a delay of 46 days was preferred by the appellant/second defendant, Lakshmikanthan. The Court below, on considering the reasons stated for condoning the delay, found them not satisfactory, hence dismissed the condone delay application and the application to set aside the *ex parte* decree.

3. Being aggrieved, by the dismissal of the application filed under Section 5 of the Limitation Act, C.R.P.NPD.No.1569 of 1998 was preferred



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and against the dismissal of the application to set aside the *ex parte* decree, C.M.A.No.806 of 1998 was preferred by the second defendant.

4. In the meanwhile, one of the schedule properties, namely, the bus permit mentioned in the Item 2 of II schedule was sold to the third party, by name, K.Rangarajan. The contesting parties have entered into a deed with the purchaser and they relinquished their rights in favour of the said K.Rangarajan ratifying the alienation of the property.

5. Be that as it may. Having preferred the appeal and revision, the third respondent/first defendant, Dhandapani died and his legal representatives were brought on record in the appeal. Further, the first respondent/first plaintiff, Kamalam and the seventh respondent/LR of first defendant, T.Vijai Anand died. Steps to bring their legal representatives on record were taken belatedly and when the papers were returned by the Registry, they were not represented in time. Therefore, delay of 121 days in representing the petition had caused and miscellaneous petitions were filed in the year 2011 and the same is pending for more than 13 years.



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6. This Court, on considering the nature of the case, the manner in which it is conducted and the disinterest shown by the appellant/second defendant in properly pursuing the case, but entering into a compromise in respect of one of the properties, proves that it is a wagering litigation kept pending without any reasonable cause. In addition, the delay in representation also had not been properly explained. Right from the institution of the suit in the year 1990 till 2024 for nearly 34 years, the second defendant, who is the appellant in the Civil Miscellaneous Appeal and petitioner in the Civil Revision Petition, had not shown any interest in pursuing the matter to establish his right, but had only taken the Court for granted and kept the matter pending for 34 years.

7. In view of the above, this Court finds no reason to entertain the application and burden itself for the sake of an uninterested litigant. Hence, the miscellaneous petitions to condone delay in representation in M.P. (MD).Nos.1 and 1 of 2011 in C.M.A.No.806 of 1998 and C.R.P.NPD.No. 1569 of 1998 are dismissed. Accordingly, the Civil Miscellaneous Appeal and the Civil Revision Petition are dismissed for non-prosecution.



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8. Insofar as the third party (10th respondent/K.Rangarajan), who has purchased the property in respect of item 2 of II schedule, which has been ratified by all the contesting parties, the ratification is to be taken note of, if any final decree application is filed for executing the preliminary decree in respect of the suit properties. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

1.The Sub Court,
Kuzhithalai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN,J.

Lm

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