



C.R.P.No.2884 of 2021 &
C.R.P.No.4312 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.2884 of 2021 and 4312 of 2017
and C.M.P.Nos.10469 and 10474 of 2025

C.Chenga Reddy (died)
C.Sridhar Reddy
S/o Late C.Chenga Reddy

....

Petitioner in
both the CRPs

-VS-

1.K.Kaja Mohideen
2.Kathoon Bivi
3.Sahul Hameed
4.Rafi Ahamed
5.Basheer Ahamed
6.Balasubramanian
7.Syed Gani

8.The Commissioner
Ambattur Municipality
Chennai 600 053.

9.The Member Secretary
Chennai Metropolitan Development
Authority, 8, Gandhi Irwin Road
Egmore, Chennai 600 008.

10.The Executive Engineer
Tamil Nadu Electricity Board
Ambattur Township, Ambattur
Chennai.

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Respondents in both
the C.R.Ps.

Prayer in C.R.P.No.2884 of 2021 : Civil Revision Petition under Section 115 of



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Civil Procedure Code against the judgment and decree of the 1st Additional District Judge at Thiruvallur in C.M.A.No.21 of 2017 dated 05.11.2019 in confirming the fair and decreetal order of the Court of the District Munsif Judge, Ambattur in I.A.No.191 of 2017 in O.S.No.257 of 2004 dated 25.04.2017.

Prayer in C.R.P.No.4312 of 2017 : Civil Revision Petition under Section 115 of Civil Procedure Code against the fair and decreetal order dated 25.04.2017 made in I.A.No.711 of 2015 in O.S.No.257 of 2004 on the file of the District Munsif Court at Ambattur.

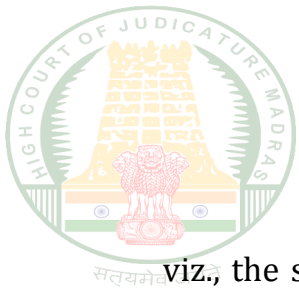
In both C.R.Ps

For Petitioner	:	Mr.P.Subba Reddy
For Respondents	:	RR 1 to 4, 8 and 9 - Served RR 5 and 7 - served through paper publication R6 - died Mr.A.Anandan Government Advocate - for R8 Mr.DBR Prabhu - for R9 Mr.S.T.Raja - for R10

ORDER

These Civil Revision Petitions arise out of the same suit. Hence, they were clubbed together and heard for disposal.

2. The plaintiffs are the civil revision petitioners. It is the case of the plaintiffs that one Sundaramma purchased the suit schedule mentioned property by way of a registered sale deed on 30.03.1992. She passed away on 14.12.1999. She left behind as her legal heirs, the first plaintiff Chenga Reddy and her sons



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viz., the second plaintiff and one Prathap Reddy. It is the case of the plaintiffs that the defendants 1 to 7 had purchased the property from a person, who did not have title to alienate the same. On the basis of the fraudulent document which had been executed in favour of the defendants 1 to 7, they had mutated the revenue records in their favour. As the defendants have taken possession of the property, the plaintiff sought for declaration of title and for delivery of possession, damages and permanent injunction not to alienate the property and for a mandatory injunction to remove the compound wall and for costs. Summons were served and the pleadings were completed.

3. The plaintiffs were represented by their power agent one Manimegalai. Pending the suit, the first plaintiff Chenga Reddy passed away on 07.12.2006. As his wife Sundaramma passed away, the persons who were entitled to succeed to the estate were the second plaintiff and his brother C.J.Prathap Reddy. As the agent and the second plaintiff did not appear before the Court on the date it was called for hearing, the suit was dismissed for default. Therefore, the plaintiff filed applications viz., I.A.No.711 of 2015 to condone the delay of 297 days in filing the restoration petition, I.A.No.191 of 2017 to set aside the order of dismissal of the suit and to restore the suit on to its file. An application was also filed to set aside the abatement and to condone the delay of 2337 days in filing an application to set aside the abatement caused due to the death of Chenga



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Reddy.

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4. The learned District Munsif, instead of numbering and taking up the Section 5 application alone, numbered both the Section 5 application, as well as the application to restore the suit. They were numbered as I.A.No.711 of 2015 and I.A.No.191 of 2017. Notice was ordered to the respondents. The respondents though served, did not enter appearance. Learned District Munsif, Ambattur took up the applications for disposal.

5. He came to the conclusion that the second plaintiff ought to have been vigilant and should not have relied upon the power of attorney for prosecuting the case. Finding that no sufficient cause was shown, the learned Judge dismissed not only the application under Section 5, but also the one under Order IX Rule 9 of the Code of Civil Procedure. Aggrieved by the dismissal of the restoration application, originally a revision was presented to this Court.

6. As objections were raised by the Registry stating that only an appeal lies as against an order dismissing an application to restore the suit, the plaintiff came to present C.M.A.No.21 of 2017. By an order dated 05.11.2019, the learned I Additional District Judge at Tiruvallur dismissed the appeal. She concurred



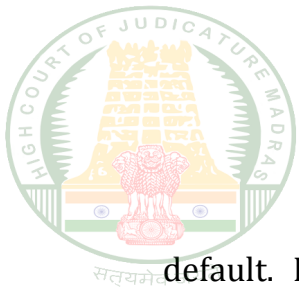
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with the view of the learned District Munsif that the plaintiff had not been vigilant to follow the suit proceedings and consequently confirmed the order. Aggrieved by the order passed in C.M.A.No.21 of 2017, C.R.P.No.2884 of 2021 has come up before this Court.

7. Insofar as C.R.P.No.4312 of 2017 is concerned, that challenges the order passed by the learned District Munsif in refusing I.A.No.711 of 2015. The revisions were entertained by this Court and notice was ordered to the respondents.

8. The contesting respondents have not entered appearance. Mr.Anandan, learned Government Advocate appears for the 8th respondent, Mr.D.B.R.Prabhu appears for the 9th respondent and Mr.S.T.Raja appears for the 10th respondent.

9. Mr.Subba Reddy pleads that the second plaintiff had bonafidely trusted the power of attorney appointed during the time of presentation of plaint. He points out from the affidavit that the counsel who was representing the plaintiffs had informed the power of attorney about the dismissal of the suit. Yet, the power of attorney had failed to inform her principals. The second plaintiff / civil revision petitioner had approached the lawyer in the year 2013 and it was then, to his shock and surprise, he came to know that the suit had been dismissed for



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default. Immediately on coming to know, in April 2013 an application was filed to restore the suit. He urges that valuable rights relating to immovable property are involved and the Courts below ought to have taken a liberal interpretation to the provisions and should have given the plaintiff an opportunity to continue with the suit. Hence, he seeks for setting aside the orders.

10. Counsels appearing for the State and State authorities plead that they will abide by any order that is passed by this Court.

11. A perusal of the record shows that the plaintiff had been following the suit with the assistance of an agent. The agent seems to have diligently prosecuted the suit from 2004 till 2012. For whatever reasons, she had not been prosecuted it thereafter. The failure of the power of attorney to inform the principal about the dismissal of the suit should not be around to visit the plaintiffs with the loss of their valuable property. The Court below should have considered that the first plaintiff had passed away and it was the son who had come forward with the application.

12. It is not a case, where the defendants had filed an application to set aside the exparte decree with condonation of delay. The Courts were dealing with an application filed by the plaintiff. A plaintiff has nothing to gain by

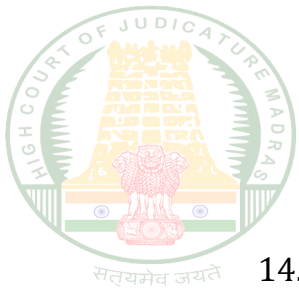


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delaying the suit, which he had presented. The reasons that have been given to me are sufficient for the purpose of condonation of delay. I am inspired by the judgment of the Supreme Court reported in **1996 (7) SCC 123 (N.Balakrishnan -vs- Krishnamurthy)**, wherein the Supreme Court has said, where vital rights of property are involved, the delay can be condoned and the rights of parties can be balanced by imposing costs on the party who has filed the application.

13. With respect of the dismissal of the applications to condone the delay, set aside the abatement and to bring on record the legal representatives, I have to point out that the learned District Munsif, as well as the learned District Judge at Tiruvallur, have failed to note that the legal representative of the deceased first plaintiff was already on record. There is no dispute that Mr.Chenga Reddy's son is Mr.Sridhar Reddy. When a legal heir is already on record in some other capacity, no question of abatement of the suit arises. If the suit does not abate, then all that the Court would have to do if found necessary, is to implead the other legal representative and proceed further with the suit. Unfortunately, this crucial aspect has not been taken note of by the Courts below. This is case of serious error of jurisdiction which has resulted in failure of justice and therefore, this Court has to interfere by exercising its power under Article 227 of the Constitution.



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14. In the light of the above discussion, C.R.P.Nos.2884 of 2021 and 4312 of 2017 are allowed on the following terms:

- (a) The civil revision petitioner / plaintiff shall deposit a sum of Rs.25,000/- each (with respect to I.A.Nos.711 of 2015 and 191 of 2017) to the credit of O.S.No.257 of 2004 on the file of the District Munsif at Ambattur. Cumulatively, a sum of Rs.50,000/- (Rupees Fifty Thousand only) shall be deposited within a period of **eight weeks** from today.
- (b) In case, the amount is not deposited, the benefit of condonation of delay and restoration of the suit granted by this order will stand automatically forfeited.
- (c) In case the order is complied, the learned District Munsif is requested to restore the suit on to its file. He shall issue notice to the private respondents informing them about the restoration of the suit, proceed further and dispose of the suit within eight months from the date of the restoration.
- (d) As the contesting respondents have not entered appearance in the revisions, there shall be no costs in



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these revisions.

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15. The above Civil Revision Petitions are allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

23.06.2025

Index : Yes/No

Neutral Citation : Yes/No

KST

To

- 1.The I Additional District Judge, Tiruvallur.
- 2.The District Munsif, Ambattur.



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V. LAKSHMINARAYANAN, J.

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