



C.R.P.Nos.396 to 399 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.04.2025

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CORAM.

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.Nos.396 to 399 of 2025  
and CMP.Nos.2347, 2351, 2371 & 2373 of 2025

**CRP.No.396 of 2025 :**

Seshammal (Died)  
Varadarajan

... Petitioner /  
Proposed 2nd defendant

Vs.

Sri Prasanna Vinayagar Temple  
at Palavayal Road, Agaram  
Jawahar Nagar, Chennai - 82.  
Rep by its Secretary  
Mr.T.Visvesiah

... Respondent / Plaintiff

**CRP.No.397 of 2025 :**

C.Periyasamy (Died)  
P.Gunasekaran

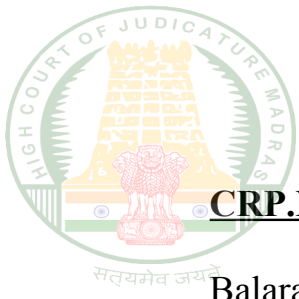
... Petitioner /  
Proposed 3rd defendant

Vs.

1.Sri Prasanna Vinayagar Temple  
at Palavayal Road, Agaram  
Jawahar Nagar, Chennai - 82.  
Rep by its Secretary  
Mr.T.Visvesiah

2.P.Neelakandan

... Respondents /  
Plaintiff, Proposed 2nd defendant



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**CRP.No.398 of 2025 :**

Balarama Naidu (Died)  
Visalatshi

... Petitioner /  
Proposed 2nd defendant

Vs.

Sri Prasanna Vinayagar Temple  
at Palavayal Road, Agaram  
Jawahar Nagar, Chennai - 82.  
Rep by its Secretary  
Mr.T.Visvesiah

... Respondent / Plaintiff

**CRP.No.399 of 2025 :**

K.Gopal (Died)  
Ravindran

... Petitioner /  
Proposed 2nd defendant

Vs.

Sri Prasanna Vinayagar Temple  
at Palavayal Road, Agaram  
Jawahar Nagar, Chennai - 82.  
Rep by its Secretary  
Mr.T.Visvesiah

... Respondent / Plaintiff

**Prayer in CRP.No.396 of 2025 :** Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 03.10.2024 in M.P.No.1 of 2024 in Ejectment Suit No.22 of 2002 on the file of IV Judge, Court of Small Causes, Chennai.

**Prayer in CRP.No.397 of 2025 :** Civil Revision Petition filed under Article



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227 of the Constitution of India, praying to set aside the order dated 03.10.2024 in M.P.No.1 of 2024 in Ejectment Suit No.26 of 2002 on the file of IV Judge, Court of Small Causes, Chennai.

**Prayer in CRP.No.398 of 2025** : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 03.10.2024 in M.P.No.1 of 2024 in Ejectment Suit No.23 of 2002 on the file of IV Judge, Court of Small Causes, Chennai.

**Prayer in CRP.No.399 of 2025** : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 03.10.2024 in M.P.No.1 of 2024 in Ejectment Suit No.24 of 2002 on the file of IV Judge, Court of Small Causes, Chennai.

For Petitioner : Ms.R.Thenamirtha Shyamala  
(in all CRPs)

For Respondent : Mr.Silambanan, Senior Counsel  
(in all CRPs) for Mr.K.Sathish

### **COMMON ORDER**

The above civil revision petitions is an example of how the procedure contemplated under the Code of Civil Procedure has now been thrown to the wind, and matters of convenience is sought to be converted as procedures. To appreciate the above lament of this Court, it is necessary to briefly set out



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the relevant facts herein below :

- (a) The issue involved in all the revisions are one and the same, and therefore, the order is passed on general terms.
- (b) The respondent-temple claiming to be the owner of the property, had filed Ejectment suits against the revision petitioners herein.
- (c) It appears the the revision petitioners, originally had filed their written statements and thereafter, the matter was not proceeded with and was simply adjourned.
- (d) All of a sudden, the plaintiff-temple woke up to the fact that the matters have not been disposed of and started putting pressure upon the Court to dispose of the suits.
- (e) It was immediately brought to the knowledge of the Court that the revision petitioners have passed away. In fact, many of them had passed away as early as in 2016 itself. Thereafter, the respondent-temple had taken out an application in the respective suits to implead the legal representatives of the deceased, as parties in the suit proceedings.
- (f) However, except for taking out an application under Order 22 Rule 4 of CPC , the plaintiff/respondent herein failed to take steps to file



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an application for condoning the delay in setting aside the abatement and to set aside the abatement.

- (g) The revision petitioners have filed their counters, in which, they have clearly stated that without filing an application to set aside the abatement, the present application filed to bring the legal heirs of the deceased, is incorrect.
- (h) However the respondent-temple chose to ignore the above contention of the revision petitioner and the learned IV Judge, Court of Small Causes, Chennai, was pleased to allow these applications by orders dated 03.10.2024.
- (i) Aggrieved by the same, the revision petitioners are before this Court.

2. Heard the learned counsel on either side.

3. This Court had summoned the original records to verify as to whether an application for condoning the delay had been filed, since a statement was made by the learned Senior Counsel appearing on behalf of the respondent-temple that an application for condoning the delay was taken



in one of the matters.

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4. The learned Senior Counsel relied upon the unreported judgment of the Hon'ble Supreme Court in ***On Prakash Gupta alias Lalldowa (now deceased) and others Vs Satish Chandra (now deceased) [Judgment dated 11.02.2025 in Civil Appeal No.13407 & 13408 of 2024]***. The Hon'ble Supreme Court was called upon to decide as to whether the High Court, Allahabad, is justified in dismissing the applications filed for condonation of delay and for substitution, and whether the second appeal could be recorded as having abated. The learned Senior Counsel would submit that the Supreme Court had ultimately held that the appeal has not been abated. This is a case where one of the legal heirs of the deceased are already on record. When one of the legal representatives are already on record, then the appeal would not abate.

5. Per contra, Ms.R.Thenamirtha Shyamala, learned counsel appearing on behalf of the revision petitioners would submit that the abatement would automatically step in on the 91<sup>st</sup> day from the date of the death, and on the close of 150<sup>th</sup> day, the delay would automatically kick in and the delay has to



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be calculated from the 91<sup>st</sup> day. In the case on hand, there are no legal representatives available on record in the suit proceedings. Therefore, the question of abatement and condoning the delay in filing an application for setting aside the abatement automatically steps in. Therefore, she would submit that the impugned order has to necessarily go. She would also submit that despite being put on notice about the pendency of the instant proceedings, the Ejectment suits have been proceeded with and in one or two cases, execution proceedings have also been initiated. She would submit that all of this would pale into insignificance, if this Court would pass an order allowing the civil revision petitions.

6. Heard the learned counsel on either side.

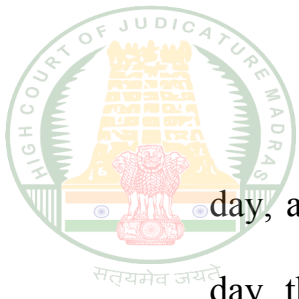
7. Admittedly, the impugned applications are filed under the provisions of Order XX Rule 4 of CPC., which deals with the procedure for bringing on record the legal heirs of the deceased defendant. Order XX Rule 4(1) provides that where the right to sue survives upon the surviving defendant/defendants, it would suffice that the person already on record can be made to continue the proceedings. Rule 4(3) provides where within the



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time limit prescribed, an application under Rule (4)(1) is not taken, then the suit would abate against that deceased defendant. Article 120 of the Limitation Act provides that the limitation for bringing on record the legal representatives of the deceased plaintiff / appellant / defendant / respondent, is 90 days from the date of death. Article 121 provides a further period of 60 days for setting aside the abatement and after this period of 150 days, the delay would automatically kick in.

8. The learned Senior Counsel for the respondent had argued that there has been no delay since the application for bringing on record the legal representatives has been taken within seven days of receiving the intimation. Such an argument cannot be countenanced for the simple reason that the proceedings of Order XX Rule 4 read with Article 120 and 121 of the Limitation Act, clearly provides that it is the date of death that is material and not the date of knowledge. Therefore, once a person dies, within 90 days from the date of death, his legal heirs have to be brought on record. In case, the legal representatives of the deceased person are already on record, the right to sue would survive upon such persons and abatement would not step in. However, if the right to sue does not survive, then from the 91<sup>st</sup>



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day, abatement would kick in till the 150<sup>th</sup> day and with effect from 151<sup>st</sup> day, the delay will set in. Even assuming that the revision petitioners had the knowledge of death a few days before taking out their applications, even then, the application for condoning the delay in filing an application to set aside the abatement and the application to set aside the abatement should necessarily be filed. The date of knowledge would only be a criteria for favourably considering the application for condonation of delay in setting aside the abatement. Even in the judgment referred to by the learned Senior Counsel, the Hon'ble Supreme Court has clearly observed that on the 151<sup>st</sup> day, the remedy for filing a petition for setting aside the abatement becomes time barred and should be accompanied by an application for condonation of delay under Section 5 of the Limitation Act.

9. Therefore, in the light of the above discussions, the impugned orders, all dated 03.10.2024, in M.P.No.1 of 2024 in Ejectment Suit No.22 of 2002, M.P.No.1 of 2024 in Ejectment Suit No.26 of 2002, M.P.No.1 of 2024 in Ejectment Suit No.23 of 2002 and M.P.No.1 of 2024 in Ejectment Suit No.24 of 2002, passed by IV Small Causes Court, Chennai, cannot be sustained and the same has to be set aside.



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10. Accordingly, all the civil revision petitions are allowed and the impugned orders of the IV Judge, Court of Small Causes, Chennai are set aside. However, liberty is given to the respondent-temple to file fresh applications for bringing on record the legal representatives of the deceased defendant in all the Ejectment suits. The Court below shall take into consideration the pendency of these proceedings and also the fact that the death of the deceased defendants was intimated to the plaintiff-temple only on 04.07.2024 and immediately on 24.07.2024, these applications have been filed by them to bring on record the legal representatives of the deceased defendants. No costs. Consequently, connected miscellaneous petitions are closed.

**16.04.2025**

Index : Yes / No  
Internet : Yes / No  
Neutral Citation : Yes / No  
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To:  
1.The IV Judge  
Court of Small Causes, Chennai.



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2. The Section Officer  
VR Section, High Court, Madras.

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P.T. ASHA, J.

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