



C.R.P.No.1858 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-10-2025

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

C.R.P.No.1858 of 2023 and CMP No.11918 of 2023

Periyasamy (died)

- 1.Selvaraju
- 2.Mohan
- 3.Tmt.Gandhi
- 4.Tmt.Chellammal

... Petitioners

Vs

- 1.Sellamuthu
- 2.Rajendran
- 3.The State of Tamil Nadu
District Collector,
Ariyalur,
Ariyalur District.
- 4.The Tahsildar,
Taluk Office,
Ariyalur District

... Respondents

Revision filed under Section 115 of Civil Procedure Code against the fair and decretal order passed in I.A.No.3 of 2022 in O.S.No.212 of 2013 on the file of Additional District Munsif, Ariyalur dated 07.03.2023.

For Petitioner: Mr.S.Kamadevan



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For Respondents: Mr.N.Muthuvel
Govt.Advocate
For R.3 and R.4
R.1 and R.2 – No appearance

ORDER

The revision has been filed by the plaintiffs, aggrieved by the order of dismissal of I.A.No.3 of 2022, which was filed in O.S.No.212 of 2013 for condonation of delay in setting aside the abatement caused due to the demise of the sole plaintiff.

2. Learned counsel for the petitioners/plaintiffs states that the suit was originally dismissed for non-prosecution and an application was taken out by the plaintiff for setting aside the order, dismissing the suit for non-prosecution. Pending the said application, the sole plaintiff died. However, the same was not brought to the notice of the counsel or the Court and the application filed to restore the suit was allowed on payment of cost of Rs.500/-. In fact, the counsel for the plaintiff has also paid the cost on behalf of the plaintiff and the suit was even restored to file. Thereafter, it came to the notice of the present revision petitioners that suit had been filed by the plaintiff and since the cause of action survives his demise, the revision



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petitioners had to get themselves impleaded in the suit and therefore, they have taken out an application to implead themselves with condonation of delay in filing the application to set aside the abatement and to set aside the abatement caused due to the death of the sole plaintiff on 01.05.2019.

3. Learned counsel for the plaintiffs would also state that the intervening Covid Pandemic period, which has been exempted by the Hon'ble Supreme Court would also have to be excluded and the delay was only 150 days though by way of abundant caution, the petitioners have sought for condonation of delay of 1159 days before the trial Court.

4. Despite service of notice, the respondents 1 and 2 have neither chosen to appear in person nor through counsel. Therefore, I have proceeded to hear the learned counsel for the revision petitioners and the learned Government Advocate for the respondents 3 and 4 and I have also gone through the impugned order.

5. The trial Court has proceeded to dismiss the application only on the ground that the death of the plaintiff has not been brought to the notice of the

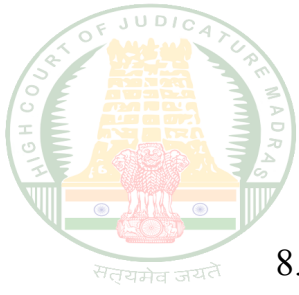


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Court, even though the application to restore the suit was pending and without doing so, the application was prosecuted and an order was also obtained and even the conditional passed in order to allow the application was also complied with in the name of the deceased plaintiff.

6. The fact that the application was allowed and the suit was restored to file cannot be imputed against the present revision petitioners, who are the legal representatives of the sole plaintiff. In fact, it is their specific case that they were not aware of the pending suit filed by the plaintiff. It was only after the suit came to be restored to file, they were put on notice about the pendency of the suit.

7. Mere fact that the counsel for the plaintiff has paid the cost also cannot be put against the present revision petitioners. The suit, being one for substantial reliefs and the cause of action is also surviving the demise of the sole plaintiff, the trial Court should have taken a liberal view and condoned the delay and permitted the present revision petitioners to prosecute the suit on merits.



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8. In the light of the above, I am inclined to set aside the order passed by the trial Court in I.A.No.3 of 2022 in O.S.No.212 of 2013 dated 07.03.2023

9. Since the suit in O.S.No.212 of 2013 is in part-heard stage. In order avoid further delay, the other consequential applications to set aside the abatement and to bring on record the legal representatives of the deceased sole plaintiff shall also be allowed and the trial Court is directed to expedite the trial and dispose of O.S.No.212 of 2013 on merits and in accordance with law within a period of nine months from the date of receipt of a copy of this order.

10. With the above direction, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

06.10.2025

Index: Yes/No
Website:yes/no
Speaking Order/Non-speaking Order
sr



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P.B.BALAJI.,J

sr

To

The Additional District Munsif, Ariyalur

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