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CRP No. 1958 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-07-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

CRP No. 1958 of 2017

P.Patchamuthu

Petitioner(s)

Vs

Govindaraj (deceased)

1. G. Dhanalakshmi

2.G.Mannikandan

.

3.G.Selvarani

Respondent(s)

PRAYER: This Civil Revision Petition has been filed under Section 115 of CPC to set aside the fair and decreetal order dated 22.09.2012 made in I.A.218 of 2012 filed in I.A.No.529 of 2006 in O.S.60 of 1999 on the file of District Munsif cum Judicial Magistrate Court, Thittakudi.

For Petitioner: Mr.S.Vennimalai

For Respondents: R1- Served
R2 & R3 – No such person
(Unserved)



ORDER

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The respondents 2 and 3 are son and daughter and the first respondent is the wife of the deceased respondent. The respondents 2 and 3 have not received the notice and despite notice being served on the first respondent, there is no representation for the first respondent. Therefore, this Court is of the view that since the first respondent/wife is representing the deceased respondent, service of notice on her alone is sufficient to proceed with the Civil Revision Petition.

2. Challenge has been made to the order passed by the Trial Court dismissing the application filed to condone the delay of 748 days in bringing on record the legal heirs of the deceased respondent.

3. The suit has been filed by the plaintiff/deceased Govindaraj in O.S.No.60 of 1999 for declaration of title and injunction. The said suit has been decreed ex parte by judgment and decree dated 14.06.2001. Thereafter, defendant/revision petitioner has filed an application in I.A.No.529 of 2006 to condone the delay of 1615 days in filing a petition to set aside the ex parte



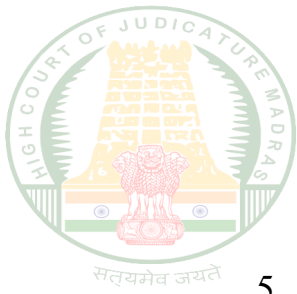
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decree stating that he had suffered with a fracture in the right hand and had been undergoing treatment from 2001. The said reason was accepted by the

Trial Court and by order dated 12.07.2010, the delay was condoned on a condition that he shall pay costs of Rs.2000/- on or before 22.07.2010.

However, the fact remains that the cost ordered by the Trial Court was not paid in time. Therefore, the revision petitioner filed I.A.No.3 of 2011 seeking extension of time and the said application had been filed on 14.11.2011. During the pendency of the said application, a memo has been filed by the plaintiff's counsel on 18.02.2012 stating that the sole plaintiff died. The matter was thereafter posted for several hearings. Subsequently, the revision petitioner/defendant filed I.A.No.218 of 2012 to condone the delay of 748 days in bringing the legal heirs of the deceased plaintiff on record and the same was dismissed by the Trial Court. Aggrieved by the same, the present revision has been filed.

4, Heard both sides and perused the materials available on records carefully.



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5. Although the petitioner had earlier filed an application to condone the delay in filing application under Order 9 Rule 13 of CPC and the Trial Court has accepted the reason for such delay, that is, he suffered fracture due to an accident in the year 2001, however, while dismissing the application in I.A.No.218 of 2012, the Trial Court had later held that no proof has been submitted to show that he was unwell.

6. Be that as it may, the memo regarding the death of the sole plaintiff was filed only in the year 2012 indicating that the Trial Court has treated the delay as if it began from the date of the plaintiff's death. However, the impleading of legal heirs could have been done only when the details of the legal heirs and the date of death were made known to the defendant, which happened only on the filing of the memo in the year 2012.

7. In view of the above, this Court is of the view that in order to give a fair opportunity to both parties, the Trial Court ought to have allowed the



application and adjudicated the matter on merits. Therefore, this Court is inclined to allow this revision.

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8. Accordingly, this Civil Revision Petition is allowed. No costs. The order passed by the Trial Court in I.A.No.218 of 2012, dated 22.09.2012, is set aside and the Trial Court is directed to dispose the main I.A.No.3 of 2012 seeking extension of time on merits. If time is extended for payment of costs, then hear the application filed under Order 9 Rule 13 and pass orders on merits and in accordance with law and dispose the suit in O.S.No.60 of 1999 within a period of three months thereafter.

16-07-2025

mrp

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

The District Munsif cum Judicial Magistrate Court,
Thittakudi.



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