



C.R.P.(NPD)(MD).No.810 of 2024

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DATED: 12.02.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD).No.810 of 2024

Arumugasundar

...Petitioner/Petitioner/Petitioner
/Plaintiff

-VS-

Muthukamatchi Chettiyar (died)

1.Murugesan

2.N.R.N.Pandiyan

3.The Sub Registrar
Sub Registrar Office
Thuvarankurichi
Manapparai Taluk
Trichy District

... Respondents1-3/Respondents 2-4
/Respondents 2-4/Defendants 2-4

PRAYER: The Civil Revision Petition has been filed under Section 115 of C.P.C, to set aside the fair and decreetal order dated 03.01.2024 passed in I.A.No.3 of 2023 in I.A.No.342 of 2012 in O.S.No.680 of 2009 on the file of the Subordinate Judge, Manapparai and allow the present civil revision petition.

For Petitioner : Mr.P.Vinoth

For Respondents : No appearance for R1

:Mr.Rhaghuvaran Gopalan for R2



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:Mr.S.P.Maharajan
Special Government Pleader for R3

ORDER

The plaintiff in O.S.No.680 of 2009 on the file of the Subordinate Court, Manapparai is the revision petitioner.

2.The said suit was filed for the relief of partition and separate possession. The plaintiff had further prayed for declaration that the settlement deed dated 31.08.1981 executed by the first defendant in favour of the second defendant is sham and nominal, inoperative and unenforceable as against the plaintiff. The plaintiff had further prayed for a decree for permanent injunction.

3.When the suit was posted for trial, due to non-appearance of the plaintiff, it was dismissed for default on 30.01.2012. The plaintiff had filed a restoration petitioner in time in I.A.No.342 of 2012. The said application was dismissed for default on 30.01.2018 for not taking steps as against the deceased first defendant. Instead of filing an application to restore I.A.No.342 of 2012, an application was filed in I.A.No.1 of 2019 (erroneously mentioned as I.A.No.1 of 2020 in the order) to condone the delay of 597 in filing the petition to restore the suit which was dismissed



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for default on 30.01.2018 the same was dismissed on 14.11.2022. After understanding, the present application has been filed in I.A.No.3 of 2023 on 15.03.2023 to condone the delay in 1795 days in filing an application to restore I.A.No.1 of 2029 which was dismissed for default on 30.01.2018 for not taking steps to implead the legal heirs of the deceased defendant.

4.The trial Court had dismissed I.A.No.3 of 2023 primarily on the ground that the plaintiff had not chosen to file an application to restore I.A.No.342 of 2012 despite the fact that it was pointed out in the counter filed by the defendants in I.A.No.1 of 2019. Since the plaintiff had not taken steps to rectify the mistake, the trial Court has accepted the contention of the learned counsel for the defendant and has proceeded to dismiss the application on ground that each and every delay has not been explained. Challenging the same, the present civil revision petition has been filed.

5.According to the learned counsel for the petitioner, while dismissing I.A.No.1 of 2019 on 14.11.2022, liberty was granted to the plaintiff to file an application to restore I.A.No.342 of 2012 if he is so advised. Within 3 months, the present application has been filed on 05.02.2023. He had further contended that the period during which the



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plaintiff was bonafidely prosecuting I.A.No.1 of 2019 should have been excluded while calculating the period of limitation.

6.Per contra, the learned counsel appearing for the respondents had contended that the delay of 1795 days has not been properly explained. The mistake committed by the plaintiff in filing I.A.No.1 of 2019 was pointed out by filing a counter in the said application. Despite the mistake being pointed out, the learned counsel for the plaintiff has proceeded with I.A.No.1 of 2019. Therefore, the period spent during the prosecution of I.A.No.1 of 2019 should not be excluded.

7.I have considered the submissions made on either side and perused the material records.

8.The suit has been filed for partition and separate possession. The application to restore the suit was filed in time. However, the said application in I.A.No.342 of 2012 has been dismissed only for not taking steps as against the deceased first defendant. Without filing an application to restore I.A.No.342 of 2012, by mistake I.A.No.1 of 2019 has been filed to restore the suit which was dismissed for default on 30.01.2018. The inadvertent mistake has happened purely due to the mistake on the part of the learned counsel for the plaintiff. Therefore, the plaintiff cannot be



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punished for the same. Taking a hypertechnical view, the trial Court has dismissed the condone delay application which was filed after dismissal of I.A.No.1 of 2019.

9.In view of the above said deliberations, the order impugned in the revision petition is set aside and I.A.No.3 of 2023 stands allowed. The trial Court is directed to consider I.A.No.342 of 2012 and pass appropriate orders on merits and in accordance with law.

10.In the result, this Civil Revision Petition stands allowed. No costs.

12.02.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

- 1.The Subordinate Judge, Manaparai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR, J

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