



C.R..P.(NPD)(MD).No.1032 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(NPD)(MD)No.1032 of 2025

and

C.M.P(MD) No.5623 of 2025

1. Elankammal

2. Rosemary

3. Jayanathan

4. Jayanthi

5. Jayachandran

... Petitioners/Petitioners/
Appellants

Vs.

1. Santha Kumari @ Vasanthakumari

2. Vasanthakumari alias Daisy

3. Vijayakumari

4. Muthunayagom

... Respondents/Respondents/
Respondents 1 to 3 and 5

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to allow the Civil Revision Petition setting aside the docket order dated

1/6



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21.02.2025 on the file of the learned Subordinate Judge, Kuzhithurai in un-numbered I.A in C.F.No.89 of 2025 in A.S.S.R.No.4510 of 2019, on his file, directing him to number the said un-numbered I.A and dispose of the same on merits and in accordance with law within a time to be fixed by this Court.

For Petitioners : Mr.K.N.Thambi

ORDER

The appellants in A.S.S.R.No.4510 of 2019 on the file of the Sub Court, Kuzhithurai, have filed the present Civil Revision Petition challenging the docket order passed in unnumbered I.A in C.F.No.89 of 2025.

2. The revision petitioners herein are the defendants in O.S.No.314 of 2006 on the file of the I Additional District Munsif Court, Kuzhithurai. The said suit was filed for the relief of declaration and permanent injunction or in the alternative for partition.

3. The trial Court has dismissed the un-numbered I.A in C.F.No.89 of 2025 filed by the appellants for restoration of I.A.No.1 of 2019.



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4. The revision petitioners herein have suffered a decree for declaration of title and recovery of possession in O.S.No.314 of 2006 on the file of the I Additional District Munsif Court, Kuzhithurai. To execute the said decree. The decree holder has filed E.P.No.13 of 2019.

5. The defendants in the said suit have filed an appeal before the Sub Court, Kuzhithurai, with a delay. To condone the said delay the appellants have filed I.A.No.1 of 2019. Pending condone delay application, the fourth respondent in the appeal had passed away. The appellants have filed I.A.Nos. 1 to 3 of 2021 to condone the delay, to set aside abatement and to implead the legal heirs of the deceased fourth respondent. For not taking steps, these three applications came to be dismissed by the trial Court. As a consequence, the appellate Court has proceeded to dismiss I.A.No.1 of 2019 also.

6. The appellants have filed the present unnumbered I.A.C.F.No.89 of 2025 to condone the delay in restoring I.A.No.1 of 2019. The appellate Court has chosen to dismiss the said application without even numbering the same by way of docket order. Challenging the same, the present Civil Revision Petition has been filed.



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7. According to the learned counsel appearing for the revision petitioners, the fourth respondent in the appeal is an unnecessary party and therefore, the death of the fourth respondent cannot be in any way affect I.A.No.1 of 2019. Without considering the said fact, the appellate Court has proceeded to dismiss I.A.No.1 of 2019, as a consequence, of the dismissal of I.A.Nos.1 to 3 of 2021. When this was brought to the notice of the Court by filing the un-numbered I.A in C.F.No.89 of 2025, the appellate Court has not accepted the same and has proceeded to reject the same.

8. The facts narrated above will clearly indicate that the trial Court ought not to have automatically dismissed I.A.No.1 of 2019, merely because, I.A.Nos.1 to 3 of 2021 were dismissed. On instructions, the learned counsel appearing for the revision petitioners submits that the fourth respondent is an unnecessary party and therefore, the death of the fourth respondent would not in any way affect the rights of the appellants in prosecuting I.A.No.1 of 2019. In such circumstances, the trial Court is directed to number the I.A in C.F.No. 89 of 2025 and pass orders on merits and in accordance with law.



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9. With the above said observation, this Civil Revision Petition is allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

01.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Subordinate Judge,
Kuzhithurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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