



C.R.P(MD)No.289 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.289 of 2019

Miyakkan Beevi

... Petitioner/Petitioner/
Plaintiff

Vs.

1.K.Jamaludeen (Died)

2.P.Subbaiah

3.S.Ganesh

... Respondents/Respondents/
Defendants

4.J.Kachi Beevi

5.J.Kani

6.Nagooral Beevi

7.J.Sayed

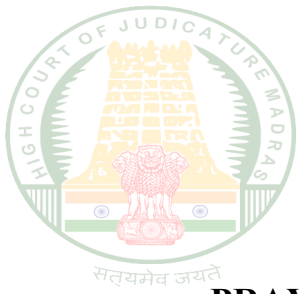
8.J.Meeyakannu Beevi

9.J.Kother Beevi

... Respondents

*(R4 to R9 are brought on record as LRs of the deceased
R1 vide Court order, dated 05.11.2024 made in
C.M.P(MD)No.2278 of 2022)*

1/7



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PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order, dated 26.10.2018 passed in I.A.No.127 of 2018 in O.S.No.146 of 2008 on the file of District Munsif cum Judicial Magistrate Court, Cheranmahadevi.

For Petitioner : Mr.M.P.Senthil

For R1,R4-R9 : Mr.M.R.Sreenivasan

For R3 : No Appearance

ORDER

The plaintiff in O.S.No.146 of 2008 on the file of District Munsif cum Judicial Magistrate Court, Cheranmahadevi is the revision petitioner herein.

2. As plaintiff, the revision petitioner has filed the above said suit for the relief of partition, seeking 2/9th share in the suit schedule properties and for separate possession. Due to the non-appearance of the plaintiff, the suit was dismissed for default on 26.10.2018. The plaintiff had filed I.A.No.127 of 2018 under Section 5 of the Limitation Act



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seeking to condone the delay of 968 days in filing an application to restore the suit. This application came to be dismissed by the trial Court.

Challenging the same, the present revision petition has been filed.

3. According to the learned counsel appearing for the revision petitioner, the delay is neither willful nor wanton. Considering the fact that the suit is for partition, there cannot be any legal impediment in restoring the suit for partition.

4. Per contra, the learned counsel appearing for the respondents/defendants had contended that the plaintiff had filed O.S.No. 384 of 1985 seeking partition of three items of property. The suit was decreed with regard to 1/5th share of the plaintiff only with regard to 3rd item. The first appeal and second appeal filed by the plaintiff with regard to the disallowed portions were dismissed. According to the learned counsel appearing for the respondents, now the present suit has been filed relating to the 1st item in O.S.No.384 of 1985. When the same relief was dismissed by the trial Court in O.S.No.384 of 1985 and confirmed in



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in second appeal, the present suit is not maintainable.

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5. The learned counsel appearing for the revision petitioner has contended that the 2nd defendant in O.S.No.384 of 1985 has passed away and therefore, that share will devolve upon the plaintiff with regard to all the three items in the said suit. Therefore, she had filed I.A.No.175 of 2008 in O.S.No.384 of 1985 seeking enlargement of her share. However, the same was dismissed by the trial Court. The plaintiff had filed A.S.No. 47 of 2011 before the Sub Court, Ambasamudram which was allowed on 25.04.2017. Challenging the same, the defendants in the suit have filed S.A(MD)No.396 of 2017 before this Court and the same is pending. Hence, he prayed that depending upon the outcome of I.A.No.175 of 2008, he may be permitted to file a final decree application.

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

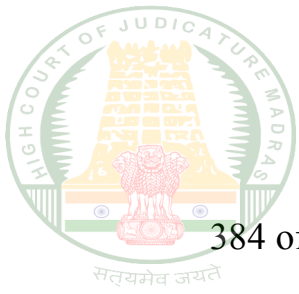


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7. The facts captured above will clearly indicate that the present plaintiff was successful in getting a partition decree only with regard to 3rd item in O.S.No.384 of 1985. She has also filed I.A.No.175 of 2008 for enlargement of the share and to pass supplementary preliminary decree only with regard to the 3rd item which is pending before this Court in S.A(MD)No.396 of 2017.

8. According to the learned counsel appearing for the revision petitioner/plaintiff, in view of the death of the 2nd defendant in O.S.No. 384 of 1985, the share of the present plaintiff would get enlarged not only with regard to 3rd item, but also with regard to first two items in O.S.No.384 of 1985.

9. Considering the above said facts, this Court is of the opinion that no purpose would be served in restoring O.S.No.146 of 2008. Whatever rights, the present plaintiff claims, may be worked out in the final decree proceedings. It is open to the revision petitioner to seek enlargement of her shares in 1st and 2nd item of the property in O.S.No.



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384 of 1985 also, if it is permissible under the Mohammedan Law.

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10. With the above said observations, this Civil Revision Petition stands dismissed. No costs.

10.02.2025

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

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To

1.The District Munsif cum
Judicial Magistrate Court,
Cheranmahadevi.

5.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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