



C.R.P(MD)No.937 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.01.2025

Pronounced on : 17.02.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.937 of 2024

and

C.M.P(MD)No.5088 of 2024

V.Murugan

... Petitioner / Petitioner /
Respondent / Defendant

Vs

1.V.Mariammal

2.V.Narayanan (Died)

3.Pechiammal

4.Muthulakshmi

5.Harish

R3 to R5 are impleaded as LR's of the
deceased R2, vide Court order dated

15.07.2024) ... Respondents / Petitioners / Plaintiffs

PRAYER : This Civil Revision petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order dated 29.03.2019 in Unnumbered A.S., on the file of Sub Court, Thoothukudi.



C.R.P(MD)No.937 of 2024

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For Petitioner : Mr.M.P.Senthil

For R1, R3 to R5 : Mr.S.C.Herold Singh

ORDER

This Civil Revision petition is filed to set aside the fair and decreetal order dated 29.03.2019 in Unnumbered A.S., on the file of Sub Court, Thoothukudi.

2. The suit in O.S.No.125 of 2007 was filed by the respondent herein seeking the relief of partition and separate possession of their due share and for cost. The suit was decreed as prayed for with cost by judgment and decree dated 14.09.2009. Against which the revision petitioner intended to file an appeal. There is a delay of 2293 days. To condone the delay, the impugned petition in I.A.No.72 of 2016 was filed under Section 5 of the Limitation Act before the appellate Court stating that they were not properly informed about the legal right to file an appeal ; There was wrong advise by the advocate that no appeal can be filed. Hence there is a delay.



C.R.P(MD)No.937 of 2024

WEB COPY

3. It was resisted by the respondent stating that previously a suit in O.S.No.18 of 2005 was filed by this revision petitioner against them. Later he did not prosecute the matter and allowed to be dismissed for default on 04.12.2006. Later only the respondent filed a suit for partition. Even during the trial process, the revision petitioner remained *ex parte* thrice namely on 01.11.2007, 09.04.2008, 14.09.2009. In all those three time, *ex parte* decree was set aside on the petition filed by the revision petitioner.

4. In pursuance of the preliminary decree, final decree application was filed by the respondent. Commissioner was appointed. He filed the report. Again he remained *ex parte*. To set aside the *ex parte* order, he filed I.A.No.1030 of 2015. That also came to be dismissed. To drag on the final decree proceedings, this petition is filed after a prolonged delay.

5. After hearing both sides, the appellate Court dismissed the petition against which this revision is preferred.



C.R.P(MD)No.937 of 2024

WEB COPY

6. Reading of the counter filed by the respondent indicates the lethargic and negligent attitude of the revision petitioner before the trial Court. In spite of repeated non-appearance and in spite of preliminary decree passed thrice, trial Court was very magnanimous in its approach in setting aside the *ex parte* decree thrice. But even after that, the revision petitioner did not correct himself. He again failed to appear in the final decree proceedings. So this shows that he wants to drag on the matter endlessly.

7. The suit for partition is filed in the year 2017, still it is dragging on. This sort of attitude cannot be encouraged. Now coming to the grounds mentioned by the revision petitioner it is quiet surprising to note that wrong legal advice was given by the particular advocate, stating that no appeal will lie against the judgment. No advocate in the profession would have ever given such an advice. So this itself indicates that the revision petitioner is not a bonafide and genuine person. As mentioned above, he wants to drag on the matter to his advantage. So I find absolutely, no reason to interfere with the order of dismissal passed by the appellate Court.



C.R.P(MD)No.937 of 2024

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8. Accordingly, this Civil Revision Petition stands dismissed with costs. Consequently, connected miscellaneous petition stands closed.

17-02-2025

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

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To

- 1.The Sub Court, Thoothukudi.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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C.R.P(MD)No.937 of 2024

G.ILANGO VAN, J.

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