



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 09.06.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.889 of 2020

1.Valli
2.Sivakami
3.Parameshwari

...Petitioners

Vs.

1.Kanagasabapathi
2.Magarasi
3.Kannammal
4.Saraswathi
5.Subramanian
6.Balasundara Ganesh
7.Radhakrishnan

...Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order passed in C.M.A.No.8 of 2019, on the file of the third Additional District Judge, Tirunelveli, dated 09.01.2020, confirming the fair and decreetal order passed in I.A.No.118 of 2017 in A.S.No.101/2012 on the file of the Principal Sub Judge, Tirunelveli dated 11.02.2019.



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For Petitioners

: Mr.T.Selvan

For Respondents 1, 5, 6 & 7 : Mr.D.Srinivasa Raghavan

ORDER

This petition has been filed seeking to set aside the fair and decreetal order passed in C.M.A.No.8 of 2019, on the file of the third Additional District Judge, Tirunelveli, dated 09.01.2020, confirming the fair and decreetal order passed in I.A.No.118 of 2017 in A.S.No.101/2012 on the file of the Principal Sub Judge, Tirunelveli dated 11.02.2019.

2.The petitioners filed a suit in O.S.No.15 of 2007 as against the respondents for partition and mesne profits. Similarly, the first respondent also filed a suit in O.S.No.755 of 2004, for declaration to declare that the suit schedule property exclusively belong to him and for injunction restraining the defendants therein not to interfere in the first respondent's property. Both the suits were clubbed together and both the suits were dismissed. As against the dismissal of the suit filed by the petitioners, the petitioners preferred appeal before the lower appellate Court in A.S.No.101 of 2012 and the same was dismissed for default on 18.09.2013. As against which, the petitioner filed I.A.No.118 of 2017, to restore the appeal in A.S.No.101 of 2012, with a condone delay petition and the same was dismissed on 11.02.2019. Challenging the same, the petitioners have preferred appeal before the lower appellate Court



in C.M.A.No.8 of 2019 and the same was dismissed on 09.01.2020.

Challenging the same, this Civil Revision Petition has been filed.

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3.Learned Counsel for the petitioners would submit that admittedly, the suits filed by the first respondent and the petitioners were dismissed on the same day ie., 28.02.2011, as against which, the first respondent did not prefer any appeal before the lower appellate Court. However, the first respondent and one Mallika filed another suit in O.S.No.15 of 2016, on the file of the Principal District Judge, Tirunelveli for permanent injunction restraining the respondents therein from interfering with the property. The Lower appellate Court arrived at a conclusion that as if there was a pressure in the cross examination in the suit filed by the first respondent and the said Mallika and thereby the said I.A.No. 118 of 2017 is filed. Admittedly, the said application filed was with the condone delay petition and the said condone delay petition was allowed in their favour. However, dismissing I.A.No.118 of 2017 is unsustainable. Accordingly, he prays for appropriate orders.

4.Considering the facts and circumstances of the case, this Court is of the opinion that allowing the restoration application to re-open the appeal will not cause prejudice to the respondents. In the absence of any prejudice and hardship, dismissing the I.A. for restoration is not sustainable and hence, the order passed by the lower appellate Court in I.A.No.118 of 2017 is set aside and



A.S.No.101 of 2012, is restored, on condition that the petitioners pay a cost of Rs.5000/- to the respondents. The receipt of payment of Rs.5000/- in favour of the respondents may be produced before the lower appellate Court. After receipt of the memo, the lower appellate Court may restore the appeal and decide the appeal in the manner known to law, within a period of six [6] months from the date of receipt of a copy of this order.

5.Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs.

09.06.2025

Internet:Yes/No

Index:Yes/No

MR



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To

- 1.The Additional District Judge,
Tirunelveli.
- 2.The Principal Sub Judge,
Tirunelveli.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

MR

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