



C.R.P(NPD)(MD)Nos.1711 and 1725 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)Nos.1711 and 1725 of 2022

R.Gunasekar @ Sekar

... Petitioner in
both C.R.Ps.

Vs

1.S.Ayubkhan

2.R.G.Rajamannar

3.Belsiya Vasanthi

... Respondents in
both C.R.Ps.

Common Prayer : These Civil Revision Petitions are filed under Section 115 of C.P.C., against the fair and executable order dated 18.04.2022 passed in the application in I.A.Nos.425 and 424 of 2019 in O.S.No.109 of 2009 respectively on the file of the III Additional Subordinate Court, Madurai.

For petitioner : Mr.J.Barathan
(in both C.R.Ps)

For Respondents : Mr.M.P.Senthil for R3
(in both C.R.Ps) R1 & R2 given up.



C.R.P(NPD)(MD)Nos.1711 and 1725 of 2022

COMMON ORDER

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These Civil Revision Petitions are filed against the fair and executable order dated 18.04.2022 passed in the application in I.A.Nos. 425 and 424 of 2019 in O.S.No.109 of 2009 respectively on the file of III Additional Subordinate Court, Madurai.

2. The facts in brief:

Suit in O.S.No.109 of 2009 was filed by the revision petitioner seeking the relief of declaration that he is the absolute owner of the suit property purchased in benami in the name of third defendant, permanent injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment and costs. The defendants in the suit are the respondents herein. The suit was dismissed for default on 15.11.2016. Later, he filed an application to restore the suit. That application came to be returned by the trial Court pointing out certain defects and 15 days time was given to re-present the same. After lapse of 984 days, the petitioner has filed a petition in I.A.No.424 of 2019 to condone the delay of 984 days in representation.



C.R.P(NPD)(MD)Nos.1711 and 1725 of 2022

3. Another I.A.No.425 of 2019 was filed to restore the suit. Both the applications were heard together and I.A.No.424 of 2019 was dismissed. Consequently, I.A.No.425 of 2019 was also dismissed. Against which, these Civil Revision Petitions are preferred.

4. Heard both sides.

5. The reason set out by the revision petitioner in I.A.No.424 of 2019 is quite novel; He has stated that as per the instruction of his astrologer, he did not want to involve himself in Court cases for two years; He advised him either to postpone the Court hearings or make a compromise; But, compromise could not be reached between the parties. Therefore, he instructed his Advocate to re-present the return petition. Because of that only there is a delay of 984 days.

6. The respondents filed a counter contending that the reasons are not proper and acceptable. The trial Court dismissed the petition stating that the reason is not convincing.



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7. The learned counsel appearing for the third respondent would rely upon the judgment of this Court in *A.Muthusamy Vs. Muniammal and others* reported in **2006 (1) CTC 187**, on the point that the consideration of a petition for condoning the delay in re-presentation will be the same line of a petition filed under Section 5 of the Limitation Act.

8. As mentioned above, the revision petitioner has set out the novel ground, instead of prosecuting the matter in a proper manner before the trial Court. He sought the advice of astrologer. It is a personal belief. But, the Court proceedings cannot be taken, to such an extent, as per the advice of the astrologer. If this sort of reasons are accepted, then it will amount to clear abuse of process of the Court. Therefore, absolutely I find no merit in the reasons set out by the petitioners for condoning the delay.

9. Moreover, it is seen that the third defendant in the main suit is his wife. The property has been purchased in the name of his wife. Now he wants to get declaration that the property belongs to him, but



C.R.P(NPD)(MD)Nos.1711 and 1725 of 2022

purchased in the name of third defendant, benami. This itself indicates that the revision petitioner wants to prolong the matter to his advantage.

10. The revision petitioner has filed a petition in I.D.O.P.No.34 of 2003 on the file of Family Court, Madurai, seeking divorce. Divorce was granted by the order dated 06.12.2010. It is seen that at that time, suit was pending. Before the very same Court, he filed a suit in O.S.No.20 of 2004 against his wife seeking declaration in respect of some other properties. The said suit was decreed as prayed for without costs. It appears that later only, the present suit was filed. He prosecuted both the matters without taking advice of the astrologer. But for prosecuting this matter, it appears that he sought the advice of astrologer. Such an attitude cannot be appreciated.

11. As mentioned above, the reasons set out by the revision petitioner were not *bona fide*, genuine and acceptable. Therefore, the trial Court rightly dismissed the petitions, which require no interference.



C.R.P(NPD)(MD)Nos.1711 and 1725 of 2022

12. Accordingly, both the Civil Revision Petitions fail and the same are dismissed. No costs.

29.01.2025

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

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C.R.P(NPD)(MD)Nos.1711 and 1725 of 2022

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To

- 1.III Additional Subordinate Court, Madurai.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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C.R.P(NPD)(MD)Nos.1711 and 1725 of 2022

G.ILANGOVA, J.

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C.R.P(NPD)(MD)Nos.1711 and 1725 of 2022

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