



C.R.P.(MD)Nos.912 and 913 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Dated : 10.01.2025

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)Nos.912 and 913 of 2024

Bharijatham (Died)

Manthaiammal @ Seethalakshmi

... Petitioner in
both the
petitions

Vs.

1.Karuppayee @ Kala

Ponnusamy (Died)

2.Ayyammal (Died)

(Memo dated 09.10.2023 presented before the Court is recorded, as R2 died and R1, who is already on record, is recorded as LR of the deceased R2 vide common order of this Court dated 09.10.2023 made in CMP(MD)Nos.8163 and 9199 of 2022 in CRP(MD) SR.Nos.55115 and 55114 of 2022)

3.Rajeshwari

4.Ananthi

5.Munusamy



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... Respondents
in both the
petitions

Common Prayer : These Civil Revision Petitions filed under Section 115 C.P.C., to set aside the order dated 04.12.2019 passed in I.A.Nos.410 and 409 of 2019 in I.A.No.25 of 2005 in O.S.No.709 of 2004 on the file of the District Munsif Court, Melur.

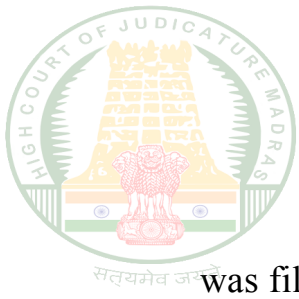
(in both the petitions)

For Petitioner : Mr.F.X.Eugene
For R1 : Mr.S.A.Ajmal Khan
For R2 : No appearance
For R3 to R5 : Mr.K.Pratap Sudarsan
For R6 : Mr.T.Antony Arul Raj

COMMON ORDER

These Civil Revision Petitions are filed to set aside the orders dated 04.12.2019 passed in I.A.Nos.410 and 409 of 2019 in I.A.No.25 of 2005 in O.S.No.709 of 2004 on the file of the District Munsif Court, Melur.

2. The facts in brief is that the original suit in O.S.No.446 of 1985

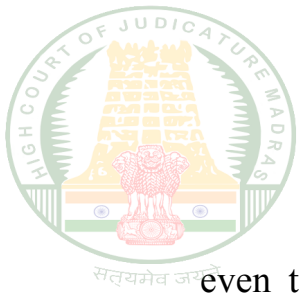


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was filed before the Subordinate Court, Madurai by the revision petitioner against the respondents seeking the relief of partition and separate possession and their 2/3 shares and for cost. Preliminary decree was passed by judgment dated 23.09.1996 and final decree application was filed by the revision petitioner in I.A.No.388 of 1999. At this stage, the suit was transferred to the District Munsif Court, Melur and renumbered as O.S.No.709 of 2004 and the final decree application was renumbered as I.A.No.25 of 2005. The respondents filed an amendment petition in I.A.No.1317 of 2017 to amend the preliminary decree and the same came to be allowed on 03.10.2013 directing the revision petitioner to amend the preliminary decree by taking steps. Since the revision petitioner did not take any steps to amend the preliminary decree, final decree application in I.A.No.25 of 2005 came to be dismissed by order dated 13.11.2017.

3. To set aside the dismissal order, the revision petitioner filed an application in I.A.No.410 of 2019 under Order 9 Rule 9 C.P.C. along with an application in I.A.No.409 of 2019 under Section 5 of the Limitation Act to condone the delay of 304 days. Notices were issued to the respondents. Even after prolonged time, the revision petitioner did not take proper steps



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even to pay batta for issuing notice to the respondents and hence, the matter was adjourned to 27.08.2019 for payment of batta to some of the respondents and then to 25.10.2019 and then to 04.12.2019. Even at the final date, the revision petitioner did not appear to pay batta as ordered earlier and so I.A.Nos.409 and 410 of 2019 were dismissed for default by order dated 04.12.2019. Against which these Civil Revision Petitions are preferred.

4. Pending revisions, the matter was referred to mediation for settlement. In spite of that, no settlement could be reached between the parties, so the matter was referred back to the Court for final disposal.

5. At the time of final disposal, on perusal of the records, which came to light that both the revisions are preferred against the order of dismissal for default that were passed due to the non-payment of batta. The revision petitioner ought to have filed an application to restore the applications, which were dismissed for default. But without resorting the said remedy, directly these revisions are preferred. When an alternative remedy is available, filing of a revision against the default order is not at



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all maintainable.

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6. At this point, the learned counsel appearing for the revision petitioner would request that since the respondents appeared before this Court, they may be directed to appear before the final decree Court so that the final decree application itself can be taken up for hearing. Even though this request appears to be reasonable, without filing a proper application for restoration, this direction cannot be issued by this Court at this stage. However, the revision petitioner is at liberty to approach the final decree Court to restore the dismissal applications on its file. In the event of filing of such fresh application, time spent during the revisional proceedings can be deducted while calculating the limitation period under Section 14 of the Limitation Act.

7. With the above said liberty, these Civil Revision Petitions are disposed of.

10.01.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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G.ILANGO VAN,J.

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To

1. The District Munsif,
Melur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Common Order made in
C.R.P.(MD)Nos.912 and 913 of 2024

Dated : 10.01.2025