



C.R.P.(MD)No.2792 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23/01/2025

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CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.2792 of 2024

and

CMP (MD) No.15731 of 2024

Ammakkannu (Died)
Chinnaponnu (Died)

- 1.Maniarasan
- 2.Kumar
- 3.Arivazhagan
- 4.Azhagar

: Petitioners/Petitioners/
Defendants 3 to 6

Vs.

Murugan (Died)

- 1.Pappa

Anjalai (Died)

- 2.Banumathy
- 3.Tamilarasi
- 4.R.Vijaya
- 5.Chinnappa
- 6.Thangamani
- 7.Kavitha
- 8.Prabhu

: Respondents/Respondents/
Plaintiffs

(Amended as per order in
IA No.232 of 2021), dated
08/09/2021)

(Notice to the respondents 2, 3
4, 6, 7, 8 may be dispensed with
as they remained ex-parte in
Lower Court)



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PRAYER:-Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code, to set aside the fair order and decreetal order, dated 11/10/2003 made in IA No.594 of 2016 in OS No.247 of 1995 on the file of the District Munsif Court, Keeranur and pass such further or other orders.

For Petitioner : Mr.N.Balakrishnan

For 1st Respondent : No appearance

For R2 to R4 and
R6 to R8 : Dispensed with

For 5th Respondent : Mr.R.Suriya Narayanan

O R D E R

This civil revision is filed against the fair order and decreetal order, dated 11/10/2003 made in IA No.594 of 2016 in OS No.247 of 1995 on the file of the District Munsif Court, Keeranur.

2.The facts in brief:-

Suit in OS No.247 of 1995 was filed by the respondents herein seeking the relief of declaration that the suit property absolutely belonged to them, for permanent injunction and for costs.

3.The defendants appeared and filed written statement. After full trial, the suit was dismissed without costs.



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4. Against which, the plaintiffs filed appeal in AS No.59 of 2000 before the Additional District Judge, Fast Track Court, Pudukottai. The suit was remitted back to the trial court for framing proper issues with regard to the adverse possession and decide the same. The judgment was pronounced on 24/08/2005. Later, it appears that the case was taken up and at that time, the revision petitioners remained *ex-parte*. To condone the delay in filing the petition to set aside the *ex-parte* decree, IA No.594 of 2016 is filed by the revision petitioners before the trial court stating that the plaintiff Murugan promised to withdraw the suit and executed a mutchhalika. Believing the words of the plaintiff namely Murugan, they did not appear the trial court. Later, they contacted their Advocate and he told that the case bundle was misplaced. Only at that time, they were informed that *ex-parte* decree and order was passed, on 21/08/2006. Later on 02/10/2015, only they came to know that Murugan did not withdraw the suit. Because of that, the delay of 3326 days occurred.

5. It was resisted by the respondents by filing counter.



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6.After hearing both sides and after examining the witnesses on the side of the petitioners and the respondents, the trial court dismissed the petition by order, dated 11/10/2023.

7.Against the dismissal order, this civil revision is preferred.

8.Heard both sides.

9.The correct particulars are not stated by the revision petitioners. As indicated in the preamble portion, the suit was remitted back to the trial court by the appellate court by decree and judgment, dated 24/08/2005. What happened after the remand order, nothing is available on record.

10.Now it has been stated by the revision petitioners that the plaintiff namely Murugan executed a mutchalika to withdraw the suit. So, believing the words, they did not appear before the trial court. But this ground itself is not available to them. It is their duty to approach before the trial court and participate in the proceedings to see that as promised by the the plaintiff namely Murugan the suit is withdrawn. Now the Mutchalika



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Ex.P1 itself was disbelieved by the trial court on appreciation of evidence. In the revisional state, re-appreciation of evidence is not required, since I find that only after proper appreciation of the evidence on record, Ex.P1 was disbelieved by the trial court for valid reasons.

11.The second ground mentioned by the revision petitioners is that their Advocate told them that the bundle was missed.

12.No doubt that no documentary evidence can be available on that point. But the revision petitioners ought to have filed proper affidavit obtained from the concerned Advocate. But it was not done. More-over, it is also seen that wrong information was given by the revision petitioners regarding the Advocate name. At this juncture only, the result of the suit after remand assumes relevancy. But that is not stated by the revision petitioners.

13.Without properly ascertaining the facts, it appears that the petition was filed by the revision petitioners. So, I find no reason to interfere in the order of dismissal passed by the trial court.



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14.In the result, this civil revision is dismissed,
confirming the impugned order passed by the court below.
No costs. Consequently, connected Miscellaneous Petition
is closed.

23/01/2025

Index:Yes/No
Internet:Yes/No
er

To,

- 1.The District Munsif Court,
Keeranur.
- 2.The Additional District Judge,
Fast Track Court,
Pudukottai.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

er

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