

C.M.A.(MD)No.1363 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 27.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.1363 of 2024

1.T.Subbulakshmi

2. Muthulakshmi

... Appellants

Vs.

M.Thamotharan (Died)

V.S.Subramanian (Died)

1. Mailammal (Died)

*(Memo dated 02.12.2024 filed on 03.12.2024 in
USR.No.45055 is recorded to the effect the R1 died
and R2 & R3, who are already on record are recorded
as LR's of the deceased R1, vide court order dated 03.12.2024
made in CMA(MD)No.1363 of 2024.)*

2. Venkada Subbiah

3. Thirumalai Nambi

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of Code of Civil Procedure, to set aside the fair and decreetal order dated 16.08.2024 passed in I.A.No.8 of 2023 in Tr.O.P.No.103 of 2018 on the file of the Principal District Court, Tirunelveli.



C.M.A.(MD)No.1363 of 2024

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For Appellant : Mr.N.Tamilmani

For R-1 : Died

For R-2 & R-3 : Mr.H.Arumugan

JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the order dated 16.08.2024 passed in I.A.No.8 of 2023 in Tr.O.P.No.103 of 2018 on the file of the Principal District Court, Tirunelveli

2. For the sake of convenience, the parties herein are referred to, as per their rank before the trial Court.

3. The brief facts in a nutshell are as follows:

(i) The interim application in I.A.No.8 of 2023 in Tr.O.P.No.103 of 2018 was filed by the petitioners to transfer the original suit in O.S.No.44 of 2016, pending before the Additional Subordinate Court, Tirunelveli. The suit is for the declaration of title to the suit properties, and the petitioners are the plaintiffs in O.S.No.44 of 2016. Subsequently, another suit, in



C.M.A.(MD)No.1363 of 2024

O.S.No.2 of 2017, was filed before the III Additional District Judge, Tirunelveli, by one V.S.Subramanian, who is the purchaser of the suit property in O.S.No.44 of 2016 from one Damodharan. The suit properties with respect of O.S.No.44 of 2016 on the file of Additional Subordinate Court, Tirunelveli and O.S.No. 2 of 2017 on the file of III Additional District Court, Tirunelveli are one and the same. Under these circumstances, the petitioners / plaintiffs in O.S.No.44 of 2016 filed Tr.O.P. The said Tr.O.P. was dismissed for default on 29.10.2018, which was restored on 22.04.2021, and again, the same was dismissed for default on 14.06.2022 and the same came to be restored on 31.01.2023.

(ii) In the meanwhile, both Damodaran as well as V.S.Subramanian, i.e, defendant in O.S.No. 44 of 2016 and the plaintiff in O.S.No.2 of 2017 passed away. By this point, the petitioners failed to take appropriate steps for the deceased respondents. As a result, the Tr.O.P was dismissed on 17.07.2023. In view of the same, I.A.No.8 of 2023 was filed on the very next day i.e., on 18.07.2023, seeking to restore the dismissed Tr.O.P.No. 103 of 2018.

(iii) The learned trial Court considering the lethargic attitude of the petitioners in diligently pursuing the Tr.O.P, citing the previous three dismissals, chose not to allow the interim application in I.A.No.8 of 2023



C.M.A.(MD)No.1363 of 2024

and the same was dismissed on 16.08.2024. Challenging the same, the present appeal came to be filed.

4. The learned Counsel appearing for the appellants / petitioners submitted that the conduct of the petitioners in allowing the Tr.O.P to get dismissed thrice was neither wanton nor willful. Being women, they were not able to give instructions to their counsels promptly at all times and that may be condoned, considering the significance of the suit in question to be tried together, this application has to be allowed. The parties with respect to the original suits in O.S.No.44 of 2016 on the file of the Additional Subordinate Court, Tirunelveli and O.S.No.2 of 2017 on the file of the III Additional District Court, Tirunelveli are one and the same and the respective suit properties are also the exactly the same and the crux of both suits is also the same. The earliest suit with respect to a declaration of title, and the latest suit is with respect to a declaration of title and the recovery of possession. Issues have already been framed in O.S.No.44 of 2016 and it is necessary that the same should be transferred before the III Additional District Judges Court, Tirunelveli, to facilitate a joint trial with O.S.No.2 of 2017. Therefore, the appellants pressed for allowing the civil miscellaneous appeal.



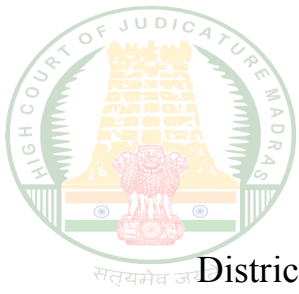
C.M.A.(MD)No.1363 of 2024

WEB COPY

5. Per contra the learned Counsel appearing for the respondents submitted that the trial in O.S.No.2 of 2017 has already been commenced, and the case is posted for cross-examination of P.W.1. However, the trial has not yet begun in O.S.No.44 of 2016. Therefore, at this stage, the purpose of Tr.O.P cannot be served by allowing this application. However, the learned Counsel fairly conceded that, in the interest of ensuring speedy justice in both civil suits invoking the inherent powers of this Court, this Court shall allow this petition along with the Tr.O.P.No.103 of 2018, giving appropriate directions to dispose of both the cases swiftly.

6. Heard the learned Counsel appearing for the appellants, the learned Counsel appearing for the respondents 2 and 3 and carefully perused the materials available on record.

7. Appreciating the fairness of the learned Counsel for the respondents, this Court hereby set aside the impugned order in I.A.No.8 of 2023 dated 16.08.2024 and allows Tr.O.P.No.103 of 2018, thereby transferring the civil suit in O.S.No.44 of 2016, on the file of the learned Additional Subordinate Judge, Tirunelveli, to the learned III Additional



C.M.A.(MD)No.1363 of 2024

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District Judge, Tirunelveli. The learned III Additional District Judge, Tirunelveli, is directed to take up the case simultaneously with O.S.No.2 of 2017 and is further directed to conclude the trial in both suits within a period of six (6) months from the date of receipt of a copy of this order. The appellants / petitioners herein are strictly directed to diligently pursue both suits before the learned III Additional District Judge, Tirunelveli. Any lethargy likely to be shown by the petitioners will have impact on that. However, considering the nature of the application before this Court and the lethargy shown by the petitioners here in, this Court hereby directs the petitioners to pay a cost of Rs.7,000 to the respondents within a period of one week from the date of receipt of a copy of this order.

8. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs.

27.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
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6/8



C.M.A.(MD)No.1363 of 2024

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To

1. The Principal District Court, Tirunelveli.
2. The Additional Subordinate Judge, Tirunelveli.
3. The III Additional District Judge, Tirunelveli.
4. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.1363 of 2024

L.VICTORIA GOWRI, J.,

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C.M.A.(MD)No.1363 of 2024

27.02.2025