



C.R.P.(MD)No.457 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2025

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.457 of 2021

V.Rajamanickam

...Petitioner

Vs.

V.Sethuramakrishnan

...Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to set aside the order passed in C.M.A.No.16/2010 dated 27.03.2018 on the file of the I Additional District Court, Madurai, confirming the fair and decreetal order passed in I.A.No.40 of 2009 in I.A.No.4 of 2009 in A.S.No.14 of 2001, on the file of the I Additional Sub Court, Madurai (Camp Court at Melur) by allowing this Civil Revision Petition.

For Petitioner : Mr.H.Arumugam

For Respondent : Mr.V.Nagendran



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ORDER

This petition has been filed seeking to quash the order passed in C.M.A.No.16/2010 dated 27.03.2018 on the file of the I Additional District Court, Madurai, confirming the fair and decreetal order passed in I.A.No.40 of 2009 in I.A.No.4 of 2009 in A.S.No.14 of 2001, on the file of the I Additional Sub Court, Madurai (Camp Court at Melur).

2.The petitioner is the plaintiff in O.S.No.103 of 1999, on the file of the District Munsif Court, Melur, against the respondent, who is the brother of the petitioner. The suit property was allotted to the petitioner by way of partition. The respondent frequently interfered with the possession and thereby, the suit came to be filed. After contest, the suit was decreed on 27.07.2000, against which the petitioner preferred appeal in A.S.No.14 of 2001, on the file of the II Additional Sub Court, Madurai. However, the said appeal was dismissed for default on 15.06.2006.

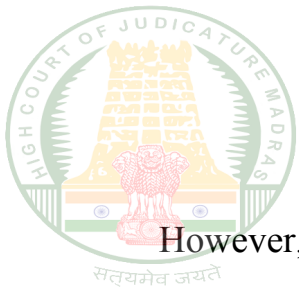
3.Learned Counsel for the petitioner was under the impression that the appeal is pending. Thereafter, on coming to know that the appeal has been dismissed for default, the petitioner filed an application in I.A.No.4 of 2009, to



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condone the delay of 837 days and not filing for proof of service to the respondent, that I.A. was dismissed on 23.06.2009. For restoration of the said I.A.4 of 2009, the petitioner filed another I.A.No.40 of 2009 and the same was dismissed after contest, against which the petitioner preferred appeal before the lower appellate court in C.M.A.No.16 of 2010 and the same was dismissed on 27.03.2018. Challenging the same, the present Civil Revision Petition has been filed.

4.Learned Counsel for the petitioner would submit that there is a dispute between the petitioner and the petitioner's brother / respondent. Admittedly, the petitioner acquired the property by way of partition, in which the respondent brother has no right to interfere. However, he frequently interfered with the enjoyment of the petitioner's property, thereby the suit was filed. The said suit came to be dismissed. Pending suit, the respondent initiated record of tenancy proceedings and the same was dismissed, against which he preferred appeal before the appellate Court, the said appeal was also dismissed. Apart from that, it is submitted that the respondent executed the deed of tenancy in favour of one Pandi Selvam. That Pandi Selvam filed O.S.No.145 of 2016 and the same was dismissed on 01.06.2016. Hence, it is submitted by the learned Counsel for the petitioner that the petitioner was in all diligence to prosecute the litigation.



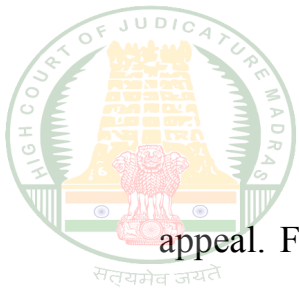
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However, the lower appellate Court arrived at a conclusion that the petitioner failed to explain his non-appearance before the appellate Court and allowed the appeal to be dismissed for default, which is unsustainable. Accordingly, he prays for allowing the present Civil Revision Petition.

5.Per contra, learned Counsel for the respondent would submit that the suit was filed in the year 1999 and the same was dismissed in the year 2000. The appeal was dismissed in the year 2006 and after a lapse of 20 years, restoring the appeal back to the court, is not in the interest of any of the parties. If at all the petitioner is aggrieved, with new cause of action he has to initiate proceedings afresh not by prosecuting earlier suit. Accordingly, he prays for dismissal of this Civil Revision Petition.

6.Heard the learned Counsel on either side.

7.Admittedly, the suit was dismissed in the year 2000 and the appeal was dismissed in the year 2006. The submission of the learned Counsel for the petitioner that the petitioner was diligently prosecuting the tenancy proceedings and allowed the appeal to be dismissed for default cannot be countenanced. Mere pendency of a another litigation cannot be cited for not prosecuting the



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appeal. Further, as rightly pointed out by the lower appellate Court, the dealy has also not been properly explained. Therefore, this Court does not find any merit in the present petition.

8.Accordingly, the Civil Revision Petition stands dismissed. However, liberty is granted to the petitioner to workout the issue in the manner known to law, if in future, any cause of action arises. There shall be no order as to costs.

11.06.2025

Internet:Yes/No

Index:Yes/No

MR



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To

- 1.The I Additional District Court,
Madurai.
- 2.The I Additional Sub Court,
Madurai (Camp Court at Melur).
- 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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