



C.R.P(MD)No.3165 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.01.2025

Pronounced on : 07.03.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.3165 of 2023

and

C.M.P(MD)No.16310 of 2023

1.Poongani

2.Rajaboopathi

... Petitioners / Appellants

Vs

Bakkiyalakshmi (died)

1.Jeyapandi

2.Rajendran

3.Arumugam

... Respondents / Respondents

COMMON PRAYER : This Civil Revision petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order in I.A.No.2 of 2022 in A.S.S.R.No.5982 of 2022 dated 04.08.2023 on the file of the Principal District Judge, Tirunelveli.

For Petitioners : Mr.J.David Ganesan

For R1 and R2 : Mr.S.Muthumalairaja

For R3 : No appearance



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ORDER

This Civil Revision petition is filed to set aside the fair and decreetal order in I.A.No.2 of 2022 in A.S.S.R.No.5982 of 2022 dated 04.08.2023 on the file of the Principal District Judge, Tirunelveli.

2. The suit in O.S.No.48 of 2013 was filed by this revision petitioner seeking the relief of partition and separate possession of 3/6 share and for declaration that the settlement document No.494/2013, 495/13, registered on the file of Sub Registrar, Thisaiyanvilai are not valid and binding and for permanent injunction. The defendants entered appearance and when the suit was called, a memo was filed purportedly on behalf of the plaintiffs by the learned counsel on record stating that the suit was settled between the parties out of the Court, so they are not pressing the suit. On the basis of the memo filed by the third plaintiff and his advocate on record, the suit was dismissed as settled out of Court by the trial Court by the order dated 04.11.2013. The present petition was filed by the revision petitioner before the appellate Court stating that there was no compromise between the parties out of the Court. They did



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not signed in any compromise memo. A false memo was filed in the Court. Now the defendants are making trouble and trying to sell the properties. Because of the trouble made by the respondent, they contacted the Advocate on 04.01.2022. At that time, she was told that the suit was dismissed as settled out of Court on the basis of the memo. After changing the counsel, the present petition is filed to condone the delay of 3064 days.

3. It was objected by the respondent by stating that learned counsel on record for the plaintiffs filed a memo stating that the matter was settled between the parties out of the Court. The reason set out in the petition for condoning the delay is unreasonable and should not be accepted.

4. The appellate Court after hearing both sides, dismissed the petition finding that the petitioner did not take any proper steps to verify the stage of the suit. No step was taken by them before the trial Court to set aside the dismissal order. Apart from that it was also stated that no proper reason was assigned for the huge delay. Against which, this revision is preferred.



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5. Heard both sides.

6. Perusal of the memo filed by the learned counsel on record for the plaintiffs indicates that one P.Arumugam who is the third plaintiff, signed in the memo, whereas, the plaintiff Nos.1 and 2 who are the revision petitioners herein, did not sign. The signature of other plaintiffs are not available. Notice was issued to the learned counsel on record for the defendant. The defendants counsel made an endorsement stating that there was no settlement, but has no objection for withdrawing the suit. On the basis of the above said memo, the suit was dismissed by the trial Court as settled out of the Court.

7. Now the revision petitioners 1 and 2 would submit that, the third plaintiff who is the brother played fraud upon them and without their knowledge and consent had withdrawn the suit. Believing his words that the suit is still pending, they did not personally verify the stage and hence there is a delay.

8. The appellate Court namely the Principal District Judge, Tirunelveli, has stated in the order that no step was taken by the revision



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petitioners before the trial Court namely Subordinate Court, Vallioor, to set aside the dismissal order and instead they want to file appeal against the order of dismissal.

9. But such a right is always available to the plaintiffs. They can choose either one of these two courses either to file an application to set aside the decree before the trial Court itself or before the appellate Court. Now the revision petitioners want to file an appeal.

10. When there is an apparent error on the face of the record, more specifically in view of the endorsement made by the defendants that no settlement was reached between the parties out of the Court, the trial Court ought to have directed the parties to be present before the Court to verify the same. But without resorting to such procedure, the trial Court on the basis of a memo filed by one of the plaintiffs, dismissed the entire suit as settled out of the Court. If at all, the trial Court ought to have dismissed the suit as against the third plaintiff only, as settled out of the Court, keeping the suit pending for trial by the plaintiffs 1 and 2. Why this important aspect failed to be taken note by the trial Court is a matter to be considered by the appellate Court.



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11. When the revision petitioner shows that fraud was played by the third plaintiff in withdrawing the suit, I am of the considered view that an opportunity must be given to them to file an appeal. The third plaintiff is shown as the third respondent herein, inspite of receipt of notice, did not appear. This also supports the ground made by the revision petitioners.

12. In view of the above said, I am of the considered view that this Civil Revision Petition is liable to be allowed and accordingly, allowed. The petition filed by the revision petitioner before the appellate Court in I.A.No.2 of 2022 in A.S.S.R.No.5982 of 2022 dated 04.08.2023 on the file of the Principal District Judge, Tirunelveli, stands allowed without cost. The appellate Court may proceed in accordance with law. Consequently, connected miscellaneous petition stands closed.

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

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To

- 1.The Principal District Judge, Tirunelveli.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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