



C.R.P.(MD)No.3239 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2025

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.3239 of 2023

Shanmuga Vijaykumar (Died)

1.Anbuselvam

2.Dineshwari ... Petitioners/Petitioners 2 & 3/Appellants 2 & 3

Vs.

1.Muthulakshmi

2.K.Senthilnainar

3.Balamurugan Basandkumar

4.Sukumar

5.Balavigneshkumar

... Respondents/Respondents/Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.No.1 of 2022 in Unregistered Appeal suit/2022 on the file of the Principal Sub Court, Tirunelveli dated 21.08.2023.

For Petitioners : Mr.T.Selvan

For Respondents : Mr.K.Gokul for R1 & R2

ORDER

This civil revision petition has been filed to set aside the fair and



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decreetal order passed in I.A.No.1 of 2022 in Unregistered Appeal suit/2022 on the file of the Principal Sub Court, Tirunelveli dated 21.08.2023.

2.The facts in brief:

Suit in O.S.No.50 of 2016 was filed by one Balamurugan Basanthkumar, Shanmuga Vijaykumar and Sugumar against the respondents 1 and 2 seeking the relief of declaration of title to the suit properties and consequential permanent injunction. The defendant appeared and filed their written statement. After full trial, the suit was dismissed by the Judgment and decree, dated 01.04.2019. Against which, no appeal was preferred by the plaintiff within the stipulated period. Later stating that one of the plaintiffs namely Shanmuga Vijaykumar was dead and so the legal heirs, who are the revision petitioners herein intend to file appeal against the judgment of dismissal. In preferring the appeal there is a delay of 1164 days. To condone the delay, they have filed the impugned petition in I.A.No.1 of 2022. That came to be dismissed by the appellate Court after hearing both sides. Against which this revision is preferred.



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3.As mentioned above Shanmuga Vijaykumar is the second plaintiff in the suit. According to the revision petitioners, after the dismissal of the suit, he died. During the life time of Shanmuga Vijaykumar he was prosecuting the matter. After the death they were under the impression that the plaintiffs 1 and 3, who are the brothers of the deceased would take care of the proceedings. So they did not take any proper action for filing the appeal in time. In the first week of March 2022, the respondent started claiming that the suit ended in their favour and the revision petitioners have no right over the properties. On that ground they approached the Advocate, who was appearing for Shanmuga Vijaykumar. At that time they were informed that the suit was dismissed on 01.04.2019. After that they received the certified copy of the judgment and decree and because of that there is a delay.

4.That was resisted by the respondent by filing counter stating that during the life time of Shanmuga Vijaykumar no appeal was filed by him realising the fact that they have no right in the properties. Moreover reason mentioned in the petition are not acceptable and proper.



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5.After hearing both sides, the appellate Court dismissed the petition. Now the learned counsel for the revision petitioner would submit that since the revision petitioners are the legal heirs of the deceased Shanmuga Vijaykumar they may be given liberty to file the appeal, since the main suit is one for declaration and permanent injunction. Originally plaintiffs 1 and 3 who are the brothers of Shanmuga Vijaykumar are not cooperating with them for prosecuting the matter further. So they are impleaded as respondents in this matter.

6.Per contra as mentioned above, the counsel for the respondents submitted that the delay is inordinate and it is not properly explained.

7.Perusal of records shows that no proper legal heir application was filed by this revision petitioners before the appellate Court along with I.A.No.1 of 2022. They directly have filed the petition, which may not be proper. So the revision is liable to be dismissed on the above said ground, of course, granting liberty to the revision petitioner to file proper legal heir application before the appellate court. In the event of filing the petition, the time taken in this proceedings shall be deducted under



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Section 14 of the limitation Act.

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8.With the above said liberty, this revision petition stands dismissed.

29.01.2025

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

To

- 1.The Principal Subordinate Judge, Tirunelveli.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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