

(2002) 12 MAD CK 0088

In the Madras High Court

Case No : C.R.P. No. 1663 of 2002 and C.M.P. 17396 of 2002

M.N. Umapathy

APPELLANT

Vs

M. Devaraj (deceased), R. Logiah, R. Navaneetham, R.
Srinivasan, D. Andal, R. Narayanadas and R. Yuvaraj

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 12

Citation : (2002) 12 MAD CK 0088

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : G. appavu, for the Appellant;

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—By the order impugned in this revision, the Court below has permitted the legal representatives of the deceased decree holder in an Execution Petition to come on record to pursue the proceedings after his demise on 01.09.2000.

2. Mr. Appavu, learned counsel for the petitioner, would contend that in the absence of necessary application seeking for condoning the delay in filing the application to come on record, the Court below ought not to have entertained the petition seeking to come on record as filed by the respondents. Learned counsel would also contend that by virtue of the provisions of the Limitation Act, the respondents ought to have filed the application within 90 days and since the application came to be filed only in the month of February, 2001, it was barred by time and therefore, the order impugned herein is not legally sustainable.

3. On a perusal of the order impugned in the revision, it is clear that the Court below, on having noted that the application was protected by Order 22 Rule 12 of the C.P.C., reached a conclusion that the contention of the petitioner cannot be accepted.

4. I am in full agreement with the said conclusion of the Court below. By virtue of Sub-rule 3 of Order 22 only during the pendency of the suit, if the plaintiff dies, the filing of application by the legal representatives is to be made within the period prescribed under the relevant provisions of law. Sub-rule 12 of Order 22 specifically excludes the application of Sub-rule 3 in respect of execution proceedings.

5. Such being the case, the contention raised on behalf of the petitioner that the period of 90 days prescribed for the L.Rs.to come on record in a pending suit will have no application. Therefore, the order impugned in this revision cannot be interfered with.

6. Hence, there is no merit in this Civil Revision Petition, which is accordingly dismissed. No costs. Consequently, the connected C.M.P.is closed.